TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~274~~ 84

WILLIAM A. FREEBORN, JAMES F. FREEBORN, AND HENRY P. GARDINER, MERCHANTS, AS W. A. FREEBORN & COMPANY, LIBELANTS, APPELLANTS,

vs.

THE SHIP PROTECTOR, HER TACKLE, ETC.—JAMES C. BELL, CLAIMANT.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ALABAMA.

FILED OCTOBER 21, 1869.

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1 Supreme Court of the United States.—In admiralty.

WILLIAM A. FREEBORN & Co., APPELLANT,
vs.
THE SHIP PROTECTOR & OWNERS, APPELLEES.

To the Supreme Court of the United States:

The petition and appeal of the above-named William A. Freeborn & Co. respectfully shows that a final decree was entered or dated on the 5th day of April, 1861, in the circuit court of the United States for the southern district of Alabama, in a certain cause of admiralty and maritime jurisdiction pending in said court, wherein the above-named William A. Freeborn & Co. was libellant, and the above-named the ship Protector and owners were claimants and respondents; in and by which said decree it was ordered, adjudged, and decreed, among other things, that the decree of the district court of the United States for the southern district of Alabama be affirmed, and that the libel in the said cause be dismissed with costs; which said decree of the said circuit court, and every part thereof, is, as the appellants are advised, erroneous, and ought to be reversed.

Wherefore these appellants respectfully pray that the said decree of the said circuit court may be reversed, and the libel, answer, depositions, evidence, and all the proceedings in said cause, may be sent to the Supreme Court of the United States without delay, and that the
2 said Supreme Court will proceed to hear the said cause anew; and that said decree of said circuit court may be reversed; and that these libellants may be restored to all things which they have lost by said decree of said circuit court.

And these appellants, as in duty bound, will ever pray.

F. S. BLOUNT,
Proctor for Appellants.

Dated this 13th July, 1869.

3 Circuit court of the United States, southern district of Alabama.—In admiralty.

WILLIAM A. FREEBORN & Co.
vs.
THE SHIP PROTECTOR & OWNERS.

The above-named libellants conceiving themselves aggrieved by the final sentence of decree entered or dated on the 5th day of April, 1861, in the above-entitled cause, doth hereby appeal therefrom, and from each and every part thereof, to the Supreme Court of the United States; and he prays that this his appeal may be allowed, and that a transcript of the record, proceedings, and evidence in the cause, duly authenticated, may be sent to the said Supreme Court.

F. S BLOUNT,
Proctor for Appellants.

Dated 13th July, 1869.

4 (Indorsed:) Wm. A. Freeborn & Co. vs. the ship Protector, &c.—James C. Bell, claimant.

JULY 28, '69.—Allowed.

S. NELSON.

REC. 274—1

5 Circuit court of the United States of America for the southern district of Alabama.

WILLIAM A. FREEBORN & COMPANY
vs.
THE SHIP PROTECTOR—JAMES C. BELL, CL'T. } Bond for costs.

Know all men by these presents, that we, James F. Freeborn and James F. Freeborn, jr., are held and firmly bound unto the above-named James C. Bell in the sum of one thousand dollars, to be paid to the said James C. Bell; for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the seventh day of August, in the year of our Lord one thousand eight hundred and sixty-nine.

Whereas the above-named William A. Freeborn and Company have prosecuted an appeal to the Supreme Court of the United States, to reverse the decree rendered in the above-entitled suit by the judge of the circuit court of the United States for the southern district of Alabama:

Now, therefore, the condition of this obligation is such, that if the above-named William A. Freeborn and Company shall prosecute

6 their said appeal to effect, and answer all damages and costs, if they fail to make their appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

J. F. FREEBORN. [SEAL.]
J. F. FREEBORN, JR. [SEAL.]

Sealed and delivered, and taken and acknowledged, this 7th day of August, 1869, before me.

[SEAL.] EDWARD M. SKIDMORE,
Notary Public, County of New York.

7 UNITED STATES OF AMERICA,
Southern District of New York:

James F. Freeborn and James F. Freeborn, jr., being duly sworn, depose and say, and each for himself says, that he is a resident and householder in the city of New York, and worth the sum of two thousand dollars over and above all debts and liabilities which he owes or has incurred, and in property exempt from execution.

J. F. FREEBORN.
J. F. FREEBORN, JR.

Subscribed and sworn before me this 7th day of August, 1869, by both deponents.

[SEAL.] EDWARD M. SKIDMORE,
Notary Public, County of New York.

8 (Indorsed:) Wm. A. Freeborn & Co. vs. the ship Protector, &c.—James C. Bell, claimant.

AUGUST 11, 1869.—Approved. S. NELSON.

9 UNITED STATES OF AMERICA, *ss:*

To James C. Bell, greeting:

You are hereby cited and admonished to be and appear before the Supreme Court of the United States, at the city of Washington, in the District of Columbia, on the first Monday in December, 1869, pursuant to an appeal from a decree of the circuit court of the United States for the southern district of Alabama, made in a certain cause, wherein William A. Freeborn & Company were libellants against the ship Protector, her tackle, &c., in which appeal the said William A. Freeborn & Company are appellants, and you are appellee, to show cause, if any there be, why said decree should not be corrected and speedy justice be done to the parties in that behalf.

S. NELSON.

AUGUST 11*th*, 1869.

10 (Indorsed:) Wm. A. Freeborn & Co. vs. the ship Protector, &c.—James C. Bell, claimant. Citation.

Personally served on the within-named appellee, Aug. 20th, 1869.

FRANCIS C. BARLOW,
U. S. Marshal S. D. of N. Y.

11 *Libel.*

WILLIAM A. FREEBORN & Co.
vs.
THE SHIP PROTECTOR.

To the honorable judge of the district court of the United States for the southern district of Alabama:

The libel of William A. Freeborn, James F. Freeborn, and Henry P. Gardnier, of the city of New York, merchants, against the ship Protector, her tackle, apparel, and furniture, and against all persons interested therein, respectfully shows—

First. That this is an action founded upon contract, civil & marstime, & said vessel is now in the district of Alabama.

Second. That the said ship, in the month of September, 1856, lay in the port of New York, bound on divers trips and voyages, and standing in need of certain supplies, repairs, & necessary, to wit, copper, tar, spikes, nails, sheathing paper, felt, tacks, yellow metal, composition nails, to render said vessel seaworthy, the libellants were appealed to furnish the same, which the [the] libellants did on the credit of the said vessel, master, & owners; that a true statement of the supplies &
12 materials so furnished, together with the price therefor, is hereto annexed, marked Schedule A.

Third. That said supplies & materials were necessary to render said vessel seaworthy & competent for their intended voyage; that said vessel was at the time of said supplies a foreign ship to the State of New York.

Fourth. That payment has been demanded and refused.

Fifth. That all and singular the premises are true and within the jurisdiction of this court.

Wherefore the libellants pray for process against said vessel, her tackle, & that this honorable court would be pleased to pronounce for

the libellants' claim aforesaid, and costs, and for such relief as may be just.

(Signed) WM. A. FREEBORN.

F. S. BLOUNT, *Proctor for Libellants.*

Oath of libellant.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

On this tenth day of January, 1859, before me, the subscriber, a commissioner appointed by the circuit court of the U. S. for the southern district of New York, according to the act of Congress in such case made and provided, before me came and appeared William A. Freeborn, who, being by me duly sworn, did depose and say that he had heard read the foregoing libel of complainant, by him subscribed, read, & knows the contents thereof; that the same are true of his own knowledge, except as to the matters therein stated on his information & belief, & as to those matters he believes it to be true.

13

[SEAL.] (Signed) GEO. W. MORELL,
U. S. Commissioner, South. Dist. New York.

Schedule "A."

NEW YORK, *September* 18th, 1856.

Ship Protector & owners to Wm. A. Freeborn & Co.:

Sept. 18.	To 2,050	sheets yellow metal, viz:		
	115,	18,	616	
	115,	"	617	
	115,	"	616	
	115,	"	617	
	115,	"	618	
	100,	20,	589	
	100,	"	587	
	100,	"	588	
	100,	"	588	
	100,	"	586	
	50,	"	303	
	100,	22,	648	
	100,	"	647	
	100,	"	646	
	100,	"	646	
	100,	"	647	
	85,	24,	606	
	85,	"	604	
	85,	"	604	
	85,	"	603	
	85,	"	605	
	2,050	sheets, 12,581 lbs., @ 23c		$2,893 63

14

Am't bro't over	2,893 63
To cartage on 20 cases do., ¼	3 75
5 bbls. tar, @ 24	15 00
2 lbs. composition spikes, @ 24c	48

	Composition nails, 1,611		
	Returned..... 405		
	1,206, *a* 22c.....	265	32
	1,100 lbs. sheathing paper, *a* 4½c.....	49	50
	13 papers felt tacks, *a* 1¼.....	1	63
	44 lbs. stem yellow metal, *a* 26c.....	11	44
	8 lbs. composition stem nails, *a* 3¾.....	3	00
24th.	13 lbs. stem yellow metal, *a* 26c.....	3	38
	4 lb. compo. stem nails, *a* 3¾.....	1	50
		3,248	63
	Cr.		
	By 30 lbs. scrap yellow metal, *a* 16c.....	4	80
		$3,243	83

"Endorsed:"
Filed January 25th, 1859.

R. B. OWEN, *Clk.*

F. S. BLOUNT, *Proctor.*

15 *Libellants' bond.*

UNITED STATES OF AMERICA,
District Court of the United States
for the Southern District of Alabama:

Know all men by these presents, that we, William A. Freeborn & James F. Freeborn & Henry P. Gardnier, trading under the firm style of William A. Freeborn & Co., and Stephen Twelves, are held and firmly bound unto R. B. Owen, clerk of the court aforesaid, in the just and full sum of one thousand dollars, lawful money of the United States; which sum well and truly to be paid to the said R. B. Owen, his successor in office, his executors, administrators, or assigns, we, and each of us, bind ourselves and each of our heirs, executors, administrators, and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 25th day of January, A. D. 1859.

The condition of the above obligation is such, that whereas the said William A. Freeborn & Co. have this day filed their libel in the court aforesaid against the ship Protector, her tackle, apparel, and furniture:

Now, therefore, if the above-bound William A. Freeborn & Co.
16 shall well and truly pay, or cause to be paid, to the said R. B. Owen, clerk as aforesaid, his successor in office, his executor, or administrators, all such costs and damages as shall be awarded against them for the wrongful suing out of admiralty process against the said ship Protector, her tackle, &c., by the said William A. Freeborn & Co., in case they fail in said suit, then the above obligation to be null and void; otherwise to be and remain in full force and effect.

(Signed) WM. A. FREEBORN & CO., [SEAL.]
By their proctor, F. S. BLOUNT.
STEPHEN TWELVES. [SEAL.]

Filed January 25th, 1859.

R. B. OWEN, *Clerk.*

Power of attorney.

Know all men by the presents, that we, William A. Freeborn, James F. Freeborn, & Henry P. Gardner, composing the firm of William A. Freeborn & Co., of the city of New York, merchants, have made, constituted, and appointed, and, by these presents, do make, constitute, and appoint, Frederic S. Blount, counsellor-at-law, of Mobile, Ala., our true & lawful attorney, for us, and in our name, place, and stead, to sign, execute, and deliver any and all bond or bonds or stipulation
17 for costs in a certain cause now pending, or in course to be commenced, in the district court of the United States for the southern district of Alabama, wherein William A. Freeborn & others are or may be libellants, & the ship Protector, her tackle, &c., respondent. And we further recognize & affirm the execution in our or either of our names of any and all bonds or stipulations for costs already made or signed by the said attorney, giving and granting to our said attorney full power to do & perform every act & thing whatsoever requisite & necessary to be done in and about the premises as fully, to all intents & purposes, as we might or could do if personally present, with full power of substitution & revocation, hereby ratifying & confirming all that our said attorney or his substitute shall lawfully do or cause to be done by virtue hereof.

In witness whereof, we have hereunto set our hands & seals the first day of February, A. D. 1859.

(Signed) WILLIAM A. FREEBORN. [SEAL.]
" J. F. FREEBORN. [SEAL.]
" H. P. GARDNER. [SEAL.]

In presence of—
J. C. LAWRENCE.

18 STATE OF NEW YORK, *City & County of New York:*

Be it known that on the 1st day of February, 1859, before me, Joseph C. Lawrence, a notary public in & for the city of New York, duly commissioned and sworn, dwelling in the city of New York, personally came William A. Freeborn, James F. Freeborn, & Henry P. Gardner, & acknowledged the above letter of attorney to be their act & deed. In testimony whereof, I have unto subscribed my name & affixed my seal of office the day & year last above written.

[SEAL.] (Signed) JOSEPH C. LAWRENCE,
Notary Public.

STATE, CITY, & COUNTY OF NEW YORK:

Be it remembered that on the first day of February, A. D. 1859, before me, Joseph C. Lawrence, a commissioner in & for said State, residing in the city of New York, appointed by the governor of the State of Alabama under the laws of said State, with full power and authority to administer oaths & affirmations, & to take testimony & depositions,
19 acknowledgements, & proof of deeds & instruments in writing, under seal, to be used or recorded in the said State of Alabama, personally appeared William A. Freeborn, James F. Freeborn, & Henry P. Gardiner, to be known to be the individuals described in & who executed the annexed instrtment, & acknowledged before me that they executed the same for the purposes therein mentioned.

Witness my hand & official seal the day & year above written.

[SEAL.] (Signed) JOSEPH C. LAWRENCE,
Commissioner for Alabama for New York.

Filed Feb'ry 9th, 1859. R. B. OWEN, *Clk.*

Writ of seizure.

UNITED STATES OF AMERICA,
District Court for the Southern District of Alabama:

The President of the United States to the marshal of said district, greeting:

You are hereby commanded that you attach, seize, & safely keep the ship Protector, her tackle, apparel, & furniture, whereof is master, & now lying in the port of Mobile, so that you have
20 said ship, her tackle, apparel, and furniture, before the judge of district court of the United States, at a term of said court to be held in and for said southern district of Alabama, at Mobile, on the 1st Monday of March next, to answer the libel of William A. Freeborn & Co. Herein fail not, & have you then & there this writ.

Witness the Hon. John Gayle, judge of the court aforesaid, this first Monday of December, 1858.

Issued the 25th day of January, A. D. 1858.

Attest: (Signed)

R. B. OWEN, *Clk So. Dist. Ala.*

Return.

Rec'd 25th January, 1859, & executed the same day. Bond given by master of the vessel.

(Signed) C. M. GODBOLD,
U. S. Marshal,
By W. D. GAGER, *D. M.*

Monition.

UNITED STATES OF AMERICA,
District Court for the Southern District of Alabama:

The President of the United States to the marshal of said district, greeting:

Whereas William A. Freeborn & Co. have exhibited their libel
21 in the court aforesaid, stating that the ship Protector is indebted to them in the amount of $3,243$\frac{12}{100}$, for materials & supplies furnished by them to said ship, in the port of New York, in the month of September 1856; & whereas the judge of the court aforesaid has ordered the first Monday of March next, for all persons concerned, to be cited to appear at the place of holding said court, at the city of Mobile, & shew cause, if any they have, why judgment should not pass, as prayed, you are hereby commanded to cite & admonish all persons having any right, title, or claim in or to the said ship Protector, her tackle, apparel, and furniture, by publicly affixing (shewing) this monition on the mainmast of said ship for some time, and by leaving with the master of said ship a true copy thereof, to be & appear at the time and place aforesaid, at the court aforesaid, & also attend upon every session to be held there & from thence until definite sentence be promulgated in said business inclusively, if any shall think it their
22 duty so to do; to hear, abide by, & perform such judicial acts as are required to be done in the premises, & further to do what unto law & justice shall appertain; and whatsoever you shall do in the premises certify unto the court aforesaid, at the time & place aforesaid, together with these presents.

Witness the Hon. John Gayle, judge of the court aforesaid, this first Monday of December A. D. 1858.

Issued this 25th day of January, 1859.

Attest:

R. B. OWEN, *Clk So. Dist. Ala.*

Return.

Rec'd 25th Jan'y, 1859, and executed same day on the capt.

C. M. GODBOLD,
U. S. Marshal,
By W. D. GAGER, *D. M.*

Restoration bond.

UNITED STATES OF AMERICA,
District Court of the United States
for the Southern District of Alabama:

Know all men by the presents, that we, Mendal Crocker &
23 Leander Merchant, are held and firmly bound to William A. Freeborn & Co. in the just & full sum of six thousand five hundred dollars; for the payment of which, well and truly to be made, we bind ourselves, our & each of our heirs, executors, administrators, & assigns, jointly & severally, firmly by these presents.

Sealed with our seals & dated this twenty-sixth day of January, in the year of our Lord one thousand eight hundred and fifty-nine.

The condition of the above bond is such, that whereas the said William A. Freeborn & Co. have exhibited their libel in the court aforesaid, setting forth and alleging that the ship Protector, while performing voyages on the waters of the sea, became indebted to the said libellants in the sum of three thousand two hundred & forty-three dollars & eighty-three cents; and whereas the said ship Protector, her tackle, apparel, and furniture, have been attached & are now in custody, etc., to answer to said William A. Freeborn & Co.; and whereas it has been ordered that said ship, her tackle, apparel, & furniture, be restored to her
24 master, on his giving bond, with good security, in the sum of $6,500, to have the said ship forthcoming to abide the decree of this honorable court: Now, therefore, the condition of the obligation is such, that if the above-bound Mendal Crocker & Leander Merchant, or either of them, shall have the said ship Protector, her tackle, apparel, & furniture, in her & their present condition, before the district court aforesaid, at a term thereof to be held on the first Monday of March next, forthcoming, to abide by & answer such decree as the said district court may make touching the premises; & shall abide by and perform such decree or judgment as his honor may at any time pronounce in the premises, & shall well and truly pay into the said William A. Freeborn & Co. all such sum or sums of money as the said district court shall or may at any time decree unto them in the premises, together with all costs & damages, then this obligation to be void; otherwise to remain in full force.

(Signed) MENDAL CROCKER. [SEAL.]
" L. MERCHANT. [SEAL.]

25 Signed, sealed, & delivered in presence of—
R. B. OWEN, *Clerk.*

Endorsement on the foregoing bond:

L. Merchant, the security on the within bond, having surrendered the said ship Protector to me this day, it is agreed by the parties that a new bond be taken with John Malcomson as security.

Mobile, 8th March, 1859.

C. M. GODBOLD, *U. S. M.*

Cancelled 8th March, 1859, another bond being this day substituted in its stead.

R. B. OWEN, *Clerk.*

Substituted restoration bond.

UNITED STATES OF AMERICA,
District Court of the United States
for the Southern District of Alabama:

Know all men by these presents, that we, Mendal Crocker, master of the ship Protector, & John Malcomson, are held and firmly bound unto William A. Freeborn & Co. in the just and full sum of six thousand dollars, for the payment of which, well and truly to be made, we & each of us bind ourselves & each of our heirs, executors, administrators, & assigns, jointly & severally, firmly by these presents.

26 Sealed with our seals & dated this eighth day of March, in the year of our Lord one thousand eight hundred and fifty-nine.

The condition of the above obligation is such, that whereas the said William A. Freeborn & Co. have exhibited their libel before the court aforesaid, setting forth & allegeing that the ship Protector, while performing voyages on the waters of the sea within the jurisdiction of the said court, became indebted to the said libellants in the sum of three thousand two hundred & forty-three dollars & eighty-three cents; & whereas the said ship Protector, her tackle, apparel, & furniture, have been attached & are now in custody, etc., to answer said William A. Freeborn & Co.; & whereas it has been ordered that the said ship, her tackle, apparel, & furniture, be restored to her master, on his giving bond, with good security, in the sum of six thousand dollars, to have the said ship forthcoming to abide the decree of this honorable court:

27 Now, therefore, the condition of the obligation is such, that if the above-bound Mendal Crocker & John Malcomson, or either of them, shall have the said ship Protector, her tackle, apparel, & furniture, in her & their present condition, before the district court aforesaid, at a term thereof to be held on the first Monday of April, & from term to term forthcoming, to abide by & answer such decree as said district court may make touching the premises, & shall abide by & perform such decree or judgment as his honor may at any time pronounce in the premises, & shall well and truly pay unto the said William A. Freeborn & Co. such sum or sums of money as the said district court shall or may at any time decree unto them in the premises, together with all costs & damages, then this obligation to be void; otherwise to remain in full force & effect.

MENDAL CROCKER. [SEAL.]
JOHN MALCOMSON. [SEAL.]

Signed, seal, and delivered in presence of—
R. B. OWEN, *Clerk.*

Filed 8th March, 1859.

R. B. OWEN, *Clk.*

28 *Claimant's answer & exceptions.*

To the Hon John Gayle, judge of the district court of the United States for the southern district of Alabama:

The claim, answer, & exceptions of Mendal Crocker, master of the ship Protector, in behalf of the owners thereof, to the libel of William A. Freeborn, James F. Freeborn, & Henry P. Gardiner, filed in this honorable court. The said Crocker, as master of said vessel, claims said vessel in behalf of James C. Bell, & states that the said Bell is the true & bona-fide owner of the said ship, her tackle, apparel, and furniture, that no other person is the owner thereof, & that he, the said master, is the lawful bailee thereof for the said owner. The claimant respectfully excepts to the libel of the said William A. Freeborn & Co. upon the following grounds, respectively:

1st. That it does not shew a case within the jurisdiction of this honorable court.

2nd. That it does not allege that the supplies & materials alleged to have been furnished could not have been procured without the
29 credit of the vessel.

3rd. It does not allege that there was a necessity at the time of procuring the supplies, that they should have been procured on the credit of the vessel.

4th. It is not alleged by whom the alleged materials & supplies, &c., were procured for the said vessel.

5th. It is not alleged that the credit of the persons who were the owners of the vessel at the time the alleged materials & supplies were furnished was insufficient to have procured them upon.

6th. It is not alleged that the then owners of the ship aforesaid are still her owners; tho' it appears upon the face of the libel that between two and three years have elapsed since the alleged credit was given.

7th. That the alleged claim is too stale to warrant the interposition of a court of admiralty.

Saving and reserving these & all other grounds of exception to the said libel, on account of its insufficiency & imperfections, & on account of its failing to present a case within the admiralty & maratime
30 jurisdiction of this honorable court, the said Crocker, in behalf of the owner of the said ship, answering says that—

First. He admits that said ship is within the limits of the southern district of Alabama.

Second. Respondent cannot, of his own knowledge, speak positively in reply to the second article in the libel of complaint contained. He believes said ship was in the port of New York in September, 1856; but he does not know whether or not she was in need of the alleged repairs & supplies in order to render her seaworthy. Respondent is informed, and verily believes, that at that time one Joseph Berry & William M. Berry, both of the State of Maine, were the owners of said ship, & that she had no master at the time; that Joseph Berry, who is believed to have then owned seven-eights of the vessel, was in New York in the summer of 1856, & was then in good credit; that he could, at that time, readily have purchased the amount of merchandise alleged by the libellants to have been furnished by them upon his own credit
31 & without reference to its use upon a ship. Respondent is informed and believes that the said Joseph Berry purchased some merchandise (but how much or of what value respondent does not know) from the said libellants, which was used upon the said ship. Respondent is informed and believes it was purchased by said Joseph

upon a credit of six months, & respondent is not aware of any lien of any sort having been given upon the ship & upon his interest therein for the same, & if material craves that libellants may be held to strict ac- proof upon this subject. Respondent respectfully submits to your honor that he is advised the said Joseph would have had no right to bind his co-owner's interest in the vessel without authority from him, & also that his own interest in the vessel would not have had any lien upon it in the admiralty law without an express hypothecation of the same.

Third. Respondent, further answering, says he is informed and believes that on or about the month of , A. D. , the said ship sailed from New York & went to the port of St. John, New Brunswick thence to Liverpool, in England, thence to St. Francisco, in Cal-
32 ifornia, thence to Chincha Island, Peru, & thence to London, thence to Mobile, Alabama, where she arrived.

That after the purchase by said Joseph Berry, she was bona fide sold and conveyed, for valuable & full consideration, by the said Joseph and William Berry, to one James W. Phillips, who bought without any notice of any claim on the part of the libellants, and again by said Phillips to said James C. Bell, the present owner, who also purchased without any notice of any claim on the part of the libellants, and no attempt, so far as respondent is aware, was ever made by the libellants to libel the said vessel upon their said alleged claim until after her arrival at the port of Mobile, as aforesaid.

Fourth. Respondents respectfully states that he is informed and believes that the said Joseph Berry & William Berry are now insolvent, & respondent respectfully insists that the said libellants have not any lien at this time, under the circumstances of this case, according
33 to the admiralty & the maratime law, upon the said vessel in the hands of the present owner.

Fifth. Respondent further, respectfully answering, says he is informed that at the time of Joseph Berry's purchase from the libellants, the purchase was made upon a credit of six months, and it was contemplated that his notes should have been given in settlement or payment; but that from circumstances or other, these notes failed to be given, & therefore respondent answers upon information he is induced to believe that the purchase (whatever it was) of Joseph Berry from the libellants was made upon the credit of said Berry and not at all upon the credit of said ship.

Sixth. Respondent does not know, & therefore cannot say, whether or not the said supplies & materials were necessary for said ship at the time they are alleged to have been furnished, in order to render her seaworthy & competent for her then intended voyage; and, if material, respondent prays the libellants may be required to make strict proof upon this subject.

34 Seventh. Said Crocker, the master of the vessel, further answering, says, payment was not demanded of him by the libellants before the commencement of this suit; & he does not know whether or not any demand was made of James C. Bell before the filing of the libel, & asks that libellant may be held to strict proof on this point also, if material.

HAMILTONS,
Proctors for Claimants.

Personally came the aforesaid Mendal Crocker, who, being duly sworn, saith he has read the foregoing claim & answer; that so far as the state-

ments therein contained are of his own knowledge, they are true; so far as made from information & belief, he believes to be true.

(Signed) MENDAL CROCKER.

Subscribed and sworn to before me this 8th March, 1859.

R. B. OWEN, *Clk.*

Filed March 8th, 1859.

R. B. OWEN, *Clerk.*

35 District court of the United States, southern district of Alabama.

2590.

WILLIAM A. FREEBORN & Co.
vs.
THE SHIP PROTECTOR, &c.

To MENDAL CROCKER, or Messrs. HAMILTON, *his Proctors:*

GENTLEMEN: Please to take notice that interrogatories to George W. Kendall, Thomas Cashare, and William B. Dunley, on behalf of the libellants in the above cause, a copy of which will be herewith furnished you by the marshal, have this day been filed in my office.

March 15th, 1859.

Very respectfully,

(Signed) R. B. OWEN, *Clerk.*

Endorsed: Notice of interrogatories filed.

Marshal's return.

Rec'd and executed March 15th, 1859, on Thos. J. Hamilton, esq.; also handed him a copy of interrogatories.

(Signed) C. M. GODBOLD, *U. S. M.*,
By WM. D. GAGER, *D. M.*

36 District court of the United States for the southern district of Alabama.—In admiralty.

WILLIAM A. FREEBORN & Co.
vs.
THE SHIP PROTECTOR, &c.

Interrogatories to be propounded to George W. Kendall, Thomas Cashare, and William B. Dunley, witnesses to be produced, sworn, and examined in a certain cause of admiralty and maratime jurisdiction now pending in the district court of the United States for the southern district of Alabama, wherein William H. Freeborn & Company are libellants against ship Protector, &c., and Mendal Crocker, on behalf of James C. Bell, claimant, on the part and behalf of libellants.

First interrogatory. What is your name, age, place of residence, and business or profession?

Second interrogatory. Did you know a ship or vessel called or named the "Protector," built in the State of Maine, which vessel was lying in the port of New York previous to and during the month of Sep-
37 tember, 1856? If so, under what circumstances did you acquire your knowledge of said vessel? By whom was she owned, from the time you first knew her, up to the twenty-fifth day of September, 1856? Where did her owners reside during that time?

Third interrogatory. State the name and part painted on the stern of said vessel at the time referred to.

Fourth interrogatory. Do you know William A. Freeborn, James F. Freeborn, and Henry P. Gardien, composing the mercantile firm of William A. Freeborn & Co? If so, in what city and State do they reside, and where do they carry on their mercantile business?

Fifth interrogatory. Look at the amount hereto annexed, marked A. Do you know anything of the sale and delivery of the articles therein mentioned? If so, state fully by whom the said articles were sold and delivered, where and when furnished, for what purpose, and how used and disposed of. What was the value or price of the articles so furnished? Are the prices in said amount charged, at the dates when said articles were sold and delivered, fair, reasonable, and just
38 prices for the same? Were the articles furnished necessary to make said ship seaworthy?

Sixth interrogatory. By whose directions and order were said articles furnished and delivered? Who was then in possession of said ship "Protector," and exercising acts of ownership over her? Upon whose or what credit or security were said articles furnished?

Seventh interrogatory. If you shall say that said articles were furnished to, and delivered for repairs on and finishing, the ship "Protector," of Bath, in the State of Maine, then lying in the port of New York, state when did said ship leave the port and harbor of New York, and for what port or ports did she sail. Has said ship since returned to the port of New York, or to any port of the State of New York, or to any port in the United States, to your knowledge, until her entry into the port of Mobile recently?

Eighth interrogatory. If you know, state the fact why the
39 libellants have not heretofore proceeded against said ship for the amount of their claim against her. Was any demand made for payment, and from whom?

Ninth interrogatory. State, if you know, why the said ship Protector has not returned to the port of New York since the month of September or October, 1856.

Tenth interrogatory. If you know any other matter or thing which would benefit libellants on the trial of this cause, state the same fully, as though interrogated thereto specially.

(Signed) F. S. BLOUNT,
Proctor for Libellants.

Before me, Richard B. Owen, clerk of the district court of the United States for the southern district of Alabama, personally appeared F. S. Blount, proctor for libellants, who, being duly sworn, deposeth and saith that he is informed and believes that the testimony of George W. Kendall, Thomas Cashare, and William B. Dunley is material for the libellants on the trial of the within-mentioned cause; that said wit-
40 nesses reside in the city and State of New York, and prays for a commission to issue to Joseph C. Lawrence, esq., of the city of New York, to take the answers of said witnesses to the interrogatories herewith filed, and to the cross-interrogatories of the claimant.

(Signed) F. S. BLOUNT.

Sworn to & subscribed this 15th March, 1859, before—
R. B. OWEN, *Clerk.*

Filed March 15th, 1859.

R. B. OWEN, *Clerk*

In the district c't at Mobile.

WILLIAM A. FREEBORN & Co.
vs.
THE SHIP PROTECTOR.

Respondents objects to the third direct int'y as incompetent, & because the name & part painted on the stern of the vessel at the time alluded to is not evidence to show where she owned at the time. He also objects to each of the last two questions in the fifth interrogatory as leading. He objects to the last part of the seventh int'y, commencing
41 with the words, "Has said ship since returned to the port of New York," as leading. He objects to the first clause of the eigth int'y, as calling for a matter lying within the knowledge of the libellants; also as calculated to elicit only the opinion of the witness, not competent as evidence; also as calculated to elicit illegal evidence. He objects to the 9th int'y as calling a matter not within the knowledge of the witnesses, & as calculated to elicit opinions not competent as evidence. He objects to the tenth int'y as leading, also as illegal. Respondents objects to the whole examination as unauthorised and illegal.

Saving and reserving these & all other proper objections & excepting to the libellants' interrogatories, the respondent propounds the following cross-interrogatories to George W. Kendall, Thomas Cashire, & William B. Dunley, witnesses named to be examined in behalf of the libellants in the above-entitled cause pending in the district court of the United States for the southern district of Alabama:

42 First. Have you any interest of any kind, either directly or indirectly, in the result of this suit? If yes, what is that interest? Will you not derive some benefit in some shape from the plaintiffs' success, and, if yes, what?

Second. If you have stated by whom said ship Protector was owned at any time previous to or during September, A. D. 1856, you will now please state precisely your means of information upon the subject. Is it from being told so by other persons, and, if yes, who told you so, & when was it you were so told, & where & how did they come to tell you so? Was your information derived from writings, &, if yes, what writings, & where are they? By whom was the ship built, and when and where? Where were you at that time? Did you ever have anything to do with managing said ship?

Third. If you have stated where the person or persons owning said ship previous to or in September, 1856, resided at that time, you will please state precisely also your means of information on that subject.

Fourth. Are you in the employment of William A. Freeborn &
43 Co., and, if yes, how long have you been so? In what capacity were you employed by them in September, 1856, & previous thereto?

Fifth. If you have testified as to the sale & delivery of the articles put down in the account attached to the plaintiffs' interrogatories, or of any of them, you will now please state if you yourself know of the sale & delivery of every one of the items charged in that account, & if not, you will be kind enough to specify the particular articles that you know were sold & delivered, & their respective values. State by whom & to whom they were delivered & at whose request. State the circumstances of the delivery. State the precise date at which each articles was sold, & also the date of its delivery.

Sixth. Were or not the articles that were sold, sold to one Joseph

Berrey, or to Joseph Berry and William Berry, & were they or not at that time the owners of said ship?

Seventh. By whom was the arrangement on the part of Freeborn & Co. made for the sale of the articles that were sold? Were you present when that arrangement was made? Did you hear all that
44 was said at the time when that arrangement was made? If you say you did, you will now please state exactly what was said on both sides. Who made the arrangement with Freeborn & Co., or the person acting for them, for the purchase? What was the date of that arrangement?

Eighth. If you have stated how the articles furnished by plaintiffs were used or disposed of, you will now please state how you know it. Did you see them used or disposed of? If yea, by whom were they so used or disposed of?

Ninth. Who was the master or captain of said ship at the time said goods were furnished? If she had no master or captain at the time, you will please say so; if she had, you will please state his full name & present place of residence.

Tenth. If you have stated that the articles furnished were necessary to make said ship seaworthy, you will please state how you know they were so necessary. Is it from your own knowledge or merely because you were so informed, & if, because you were so informed, who
45 told you so, & when, & what did he say at the time? Be kind enough to repeat his language, or the substance of it.

Eleventh. In what way were the articles furnished by the libellants made use of? Did you see them so used? Are you a judge of the necessity for such articles being used on a ship? If yea, in what way did you acquire your knowledge on the subject? Did you ever yourself do work of that sort upon a vessel? If yea, when & where, & for how long a time, & how long ago? Did you examine this ship yourself to see if there was a real necessity for this work being done upon her? If yea, what induced you to do so, & when did you make the examination?

Twelfth. Did you yourself make the sale of the articles specified in the libellants' account attached to their interrogatories? How then do you know upon whose or what credit or security said articles were furnished? State precisely your means of information upon this subject.

Thirteenth. Were not said articles sold to Joseph and William
46 Berry upon a credit of some three or six months or (or) some other specific time? Was it not understood or expected at one time that a note or notes would be given for the amount, or for a good portion of it, or were you not advised of that arrangement?

Fourteenth. What have been your means of knowledge as to the movements of the ship Protector since she left the port of New York, in the fall of 1856? Do you know where she has been to since? If yea, please state the same.

Fifteenth. If you have stated any reason for libellants not having sooner proceeded against said ship you will now state when you got your information on that subject. Is it from your own opinion, or from what the plaintiffs, or some of them, told you?

Sixteenth. If you have stated that any demand was made for payment & from whom, you will please state all the circumstances attending such demand from first to last, & state all that was said & done in regard to it. Was there or not a suit commenced & afterwards dismissed or discontinued?

47 Seventeenth. If you have stated any reason for the ship Protector not having returned to New York since September or October,

1856, you will please state all you know upon that subject. State if you are not merely stating your opinion on the subject.

Eighteenth. State anything, everything else within your knowledge likely to be of benefit to the defendant in this suit.

(Signed) HAMILTONS,
Proctors for Respondent.

We desire to be notified, or that respondent may be notified, of the time & place, or times & places, of taking this testimony, so that the respondent can be present at the examination in person, or by attorney, if he sees proper.

HAMILTONS, *for Respondent.*

Respondent suggests the name of Gouverneur M. Ogden, esquire, of New York, as that of a suitable person to act as one of the commissioners, if the depositions, or any of them, are to be taken in New York.

HAMILTONS, *for Resp't.*

Endorsed: Cross-inty's to Geo. N. Kendall, Thos. Cashare, & W. B. Dunley.

Filed March 19th, 1859.

R. B. OWEN, *Clerk.*

Claim & answer was filed by master in behalf of the owner, James C. Bell, of New Nork.

48 SEPTEMBER 18*th*, 1856.

Ship Protector & owners to W. A. Freeborn & Co.,

DR.

Sept. 18. To 2,050 sheets yellow metal, viz:

115,	18,	616
115,	"	617
115,	"	616
115,	"	617
115,	"	618
100,	20,	589
100,	"	587
100,	"	588
100,	"	588
100,	"	586
50,	"	303
100,	22,	648
100,	"	647
100,	"	646
100,	"	646
100,	"	647
85,	24,	606
85,	"	604
85,	"	604
85,	"	603
85,	"	605
2,050 sheets,		12,581 lbs., *a* 23c 2,893 63

	To cartage on 20 cases do., *a* ½	3 75
	" 5 bbbls. tar, *a* 24|	15 00
	" 2 lbs. composition spikes, *a* 24c	48
	" composition nails, 1,611	" "
	" returned 405	
	—— 1,206 lbs., *a* 22c	265 32
	" 1,100 sheathing paper, *a* 4½c	49 50
	" 13 papers felt tacks, *a* 1|	1 63
	" 44 lbs. stem yellow metal, *a* 26c	11 44
	" 8 lbs. composition stem nails, *a* 3|	3 00
24.	" 13 lbs. stem yellow metal, *a* 26c	3 38
"	" 4 lbs. compo. stem nails, *a* 3|	1 50
		3,248 63
	CR.	
	By 3 lbs. scrap yellow metal, *a* 16c	480
		3,243 83

"Endorsed:" Copy of the account attached to the libel.
Attest: R. B. OWEN, *Clerk D. C.*

49 UNITED STATES OF AMERICA,
District Court of the United States
for the Southern District of Alabama:

No. 2590.

WILLIAM A. FREEBORN & Co.
vs.
SHIP PROTECTOR, &c.

To , esqrs., greeting:

Know ye, that we, in confidence of your prudence and fidelity, have appointed you, and, by these presents, do give you, or any one of you, full power and authority to examine George W. Kendall, Thomas Cashare, and William B. Dunley as witnesses in a cause pending in our said court, wherein Wm. A. Freeborn & Co. are libellants, and the ship Protector, her tackle, &c., is respondent.

And therefore we command you, or any one of you, that at such time as you may appoint you do cause the said Thomas Cashare, Geo. W. Kendall, and William B. Dunley to come before you, or either of you, and then and there examine them on oath as witnesses in the cause aforesaid.

And that you, or either of you, do take such examination, and
50 reduce the same into writing, and return the same annexed to this writ, closed up under your seals, or the seal of any one of you, into our said district court, with all convenient speed.

Witness the Hon. John Gayle, judge of said district court of the United States, and the seal of said district court, the first Monday of December, in the year of our Lord one thousand eight hundred and fifty-eight.

Issued day of , 1859.

R. B. OWEN,
Clk D. C. Sou. Dis. Ala.

Let the respondent James C. Bell, or his proctors, have notice of the time and place, or times and places, of examining the within-named witnesses, so that he may be present at the examination in person, or by attorney, if he sees proper.

Attest: R. B. OWEN, *Clerk.*

51 In the district court of the United States for the southern district of Alabama.

WILLIAM A. FREEBORN & Co.
vs.
SHIP PROTECTOR.

Examinations and depositions of witnesses produced, sworn, and examined by the undersigned commissioner in virtue of annexed commission issuing out of the honorable district court of the United States for the southern district of Alabama, taken and reduced to writing in the city, county, and State of New York, the place where the commission is executed, on this thirteenth day of October, A. D. one thousand eight hundred and fifty-nine.

THOMAS CASHARE, aged thirty-one years, being duly sworn, answers and deposes as follows to the direct and cross interrogatories propounded to him:

First direct interrogatory. What is you name, age, place of residence, and business or profession?

THOMAS CASHARE.

J. C. LAWRENCE, *Commissioner.*

Answer. My name is Thomas Cashare; I am thirty-one years
52 of age; I reside and do business in the city of New York, and am a porter to the plaintiff in the above-entitled cause by profession.

2nd direct interrogatory. Did you you know a ship or vessel called or named the Protector, built in the State of Maine, which vessel was lying in the port of New York previous to and during the month of September, 1856? If so, under what circumstances did you acquire your knowledge of said vessel? By whom was she owned from the time you first knew her up the twenty-fifth day of September, 1856? Where did her owners reside during that time?

Answer. I saw the ship Protector, of Maine, in the port of New York, in the month of September, 1856. I know it by seeing her and having transactions with her. I do not know who owned her or where the owners reside.

3rd direct interrogatory. State the name and part painted on the stern of said vessel at the time referred to.

Answer. I do not know the name of the place painted on the
53 stern of the ship Protector.

4th direct interrogatory. Do you know William A. Freeborn, James F. Freeborn, and Henry P. Gardiner, composing the mercantile firm of William A. Freeborn & Co.? If so, in what city and State do they reside, and where do they carry on their mercantile business?

Answer. I do know William A. Freeborn, James F. Freeborn, and Henry P. Gardiner. They compose the firm of William A. Freeborn & Co. They reside and carry on their mercantile business in the city, county, and State of New York.

THOMAS CASHARE.

J. C. LAUSON, *Commissioner.*

5th direct interrogatory. Look at the account hereto annexed, marked A. Do you know anything of the sale & delivery of the articles therein mentioned? If so, state fully by whom the said articles were sold and delivered, where and when furnished, for what purpose, and how used and disposed of. What was the value or price of the articles so furnished? Are the prices in same amount charged, at the dates
54 when said articles were sold and delivered, fair, reasonable, and just prices for the same? Were the articles furnished necessary to make the said ship seaworthy?

Answer. The witness examines the account hereto annexed, marked A, and says he does not know of the articles therein mentioned being sold by the firm of William A. Freeborn & Co., and delivered by him (witness) at the time mentioned in the account hereto annexed, marked A, and at the time she (the ship Protector) was on the sectional dock in the city of New York, for the purpose of being mettaled and making her ready for sea; it was nailed on the ship's bottom by composition nails. The prices stated in said account are the usual prices charged and were so at the dates mentioned in said account, and were neces , to make the vessel seaworthy.

6th direct interrogatory. By whose directions and order were said a f ticles furnished and delivered? Who was then in possession
55 said ship Protector and exercising acts of ownership over her? Upon whose or what credit or security were said articles furnished?

Answer. I do not know anything of the matter enquired of in this sixth direct interrogatory.

THOS. CASHARE.

J. C. LAWRENCE, *Commissioner.*

7th direct interrogatory. If you should say the said articles were furnished to and delivered for repairs on and furnishing the ship Protector, of Bath, in the State of Maine, then lying in the port of New York, state further when did said ship leave the port and harbor of New York, and for what port did she sail. Has said ship returned to the port of New York or to any port in the United States, to your knowledge, until her entry into the port of Mobile recently?

Answer. I do not know where the vessel sailed to when she left the port of New York after she was repaired, and I have no knowledge of her being in the United States up to the time of her arrrival in Mobile.

56 8th direct interrogatory. If you know, state the fact why the libellants have not heretofore proceeded against said ship for the amount of their claim against her. Was any demand made for payment, and from whom?

Answer. I do not know anything of the matter inquired of in this interrogatory?

9th direct interrogatory. State, if you know, why the said ship Protector has not returned to the port of New York since the month of September or October, 1856.

Answer. I do not know anything of the matter enquired in this interrogatory.

10th direct interrogatory. If you know any other matter or thing which would benefit libellants on the trial of this cause, state the same fully as though interrogated thereto specially.

Answer. The supplies of this character are supplies on the credit of the vessel and owners.

THOS. CASHARE.
THOS. CASHARE.

J. C. LAWRENCE, *Commissioner.*

57 Cross-interrogatories:

1st cross-interrogatory. Have you any interest of any kind, either directly or indirectly, in the result of this suit? If yea, what is that interest? Will you not derive some benefit in some shape from the plaintiffs' success, and, if yea, when?

Answer. I have no interest, either direct or indirect, in the result of this suit.

2d cross-interrogatory. If you have stated by whom said ship Protector was owned at any time previous to or during September, A. D. 1856, you will now please state precisely your means of information upon the subject. Is it from being told so by other persons, and, if yea, who told you so; and where was it you were so told; & [and] where and how did they come to tell you; or was your information derived from writings; and, if yea, what writings, and where are they? By whom was the ship built, and when and where? Where were you at that time? Did you have anything to do with managing said ship?

58 Answer. I have not stated who owned the vessel, and can therefore only state in answer to this interrogatory, that I never had anything to do with the management of said ship.

3rd cross-interrogatory. If you have stated where the person or persons owning the ship previous to or in September, 1856, resided at that time, you will please state precisely also your means of information on that subject.

Answer. I have stated nothing as enquired of as supposed in this interrogatory.

4th cross-interrogatory. Are you in the employment of William A. Freeborn & Co., and, if yea, how long have you been so? In what capacity were you employed by them in September, 1856, and previous thereto?

Answer. I am at this time in the employ of Messrs. William A. Freeborn & Co., the plaintiffs in this suit, and have been so employed
59 for eight or ten years as porter, and was so employed in the month of September, A. D. one thousand eight hundred and fifty-six.

5th cross-interrogatory. If you have testified as to the sale and delivery of the articles put down in the account attached to the plaintiffs' interrogatories, or any of them, you will now please state if you yourself know of the sale and delivery of every one of the items charged in that account, and if not you will be kind enough to specify the articles that you know were sold and delivered, and at whose request. State the circumstances of the delivery. State the precise date at which each article sold, and also of the date of delivery.

Answer. I do know of the delivery of the items charged in the account hereunto annexed, marked A, before referred to. (And witness goes over the account and specifies the different articles and value.) They were delivered by witness to the ship, by direction of one of the principals. The articles were delivered to the purchaser, who—

THOS. CASHARE.

J. C. LAWRENCE, *Commissioner*.

60 —purchased the articles, who delivered them to the ship. The dates are particularly mentioned in the accounts.

6th cross-interrogatory. Were or not the articles that was sold, sold to one Joseph Berry, or to Joseph Berry and William Berry, & were they or not at that time the owners of the vessel?

Answer. All I know is they were delivered to the ship, and I know of special credit or sale of them to persons enquired of, and do not know, as before stated, who owned the ship.

7th cross-interrogatory. By whom was the arrangement, on the part of Freeborn & Co., made for the sale of the articles that were sold, & were you present when that arrangement was made? Did you hear all that was said at the time when the arrangement was made? If you say you did, you will please state exactly what was said on
61 both sides. Who made the arrangement with Freeborn & Co., or the person acting for them, for the purchases? What was the date of that arrangement?

Answer. I was not present at the arrangement of sale, and do not know who acted for either party or what was said.

8th cross-interrogatory. If you have stated how the articles furnished by plaintiffs were used or disposed of, you will now please state how you know it. Did you see them used or disposed of? If yea, by whom were they used or disposed of?

Answer. I say the metal put on the vessel by the ship-carpenters who were repairing the vessel.

9th cross-interrogatory. Who was the master or captain of said ship at the time said goods were furnished? If she had no master or captain at the time, you will please say so. If she had, you will please state his full name and present place of residence.

THOS. CASHARE.

J. C. LAWRENCE.

Answer. I do not know whether she had a master or not at the time.

62 10th cross-interrogatory. If you have stated that the articles furnished were necessary to make said ship seaworthy, you will please state how you know they was so necessary. Is it of your own knowledge, or merely because you were so informed; who was you so, and when, and what did he say at the time? Be kind enough to repeat his language, or the substance of it.

Answer. I know of my own knowledge and general experience that the articles were necessary for the repairs of the vessel.

11th cross-interrogatory. In what way was the articles furnished by the libellants made use of? Did you see them so used? Are you a judge of the necessity for such articles being used on a ship? If yea, in what way did you require your knowledge on the subject? Did you ever yourself do work of that kind upon a vessel? If yea, when
63 and where, and for how long a time? How long ago? Did you examine the ship yourself to see if there was a real necessity for that work being done upon her? If yea, what induced you to do so, and when did you make the examination?

Answer. The articles furnished by libellants were nailed on the bottom of the ship, as before stated. I saw them nailed myself. I am a judge for the necessity of such articles. I became acquainted with the same in connection with shipping. I never worked in the business myself. I never made any particular examination, but saw them myself.

12th cross-interrogatory. Did you yourself make the sale of the articles specified in the libellants' account attached to their interrogatory? How, then, do you know upon whose or what credit or security said articles was furnished? State precisely your means of information upon this subject.

Answer. I know nothing of the matter enquired of in this interrogatory except that I did not make the sale of the articles—

THOS. CASHARE.

J. C. LAWRENCE, *Com'r.*

64 —mentioned in the account hereunto annexed, marked A.

13th cross-interrogatory. Were not said articles sold to Joseph and William Berry upon a credit of some three or six months, or some other specified time? Was it not understood or expected at one time that a note would be given for the amount, or for a good portion of it, or were you not advised of their arrangement?

Answer. I know nothing of the matter enquired of in this interrogatory.

14th cross-interrogatory. What has been your means of knowledge as to the movements of the ship Protector since she left the port of New York in the fall of 1856? Do you know she has been since? If yea, please state the same.

Answer. I have never heard of the ship Protector since she left the port of New York, and have no knowledge of her whereabouts.

65 16th cross-interrogatory. If you state any demand was made for payment, and from whom, you will please state all the circumstances attending such demand from first to last, and state all that was said and done in regard to it. Was there not a suit commenced and afterwards discontinued?

Answer. I have not stated anything enquired of in this interrogatory

17th cross-interrogatory. If you have stated any reason for the ship Protector not having returned to New York since September or October, 1856, you will please state all you know on that subject. State if you are not only stating your opinion on the subject.

Answer. I have not stated anything enquired of in this interrogatory.

THOMAS CASHARE. [J.]

J. C. LAWRENCE, *Com's.*

18th cross-interrogatory. State anything, everything else within your knowledge likely to be of benefit to the defendant in this suit.

Answer. I do not know as I can state anything more than I

66 have already stated in my answers to the foregoing interrogatories that will benefit the defendant in this suit.

(Signed) THOMAS CASHARE.

STATE OF NEW YORK,
New York City & County, ss:

I, Joseph C. Lawrence, a notary public in and for the State of New York, ex officio United States commissioner, and the commissioner named in the annexed commission, do hereby certify that Thomas Cashare, whose name is signed to the foregoing deposition, sworn to and subscribed the same in my presence on the thirteenth day of October, A. D. one thousand eight hundred and fifty-nine, at my office in the city of New York, and the same was reduced to writing by me, the said commissioner.

In witness whereof, I have hereunto subscribed my name and affixed my official seal as a notary public and ex officio commissioner of the United States this 13th day of October, A. D. 1859.

[SEAL.] JOSEPH C. LAWRENCE.

Notary Public & Commissioner of the United States ex officio,
18 *Exchange Place, New York.*

67

Taking testimony	20 00
Copying papers	10 00
Recording papers	3 00
	$33 00

Charged to plaintiffs.

(Signed) J. C. LAWRENCE.

WILLIAM B. DUNLEY, aged twenty-nine years, being duly sworn, answers and deposes as follows to the direct and cross interrogatories propounded to him:

1st direct interrogatory. What is your name, age, place of residence, and business by profession?

Answer. My name is William B. Dunley; I am twenty-nine years of age; I reside in the city of New York; and am a copper puncher by profession.

2nd direct interrogatory. Did you know a ship or vessel called the Protector built in the State of Maine, which vessel was lying in the port of New York previous to and during the month of September, 1856? If so, under what circumstances did you acquire your knowledge of said vessel? By whom was she owned from the time you first knew her—

W. B. DUNLEY.

J. C. LAWRENCE, *Commissioner.*

68 —up to the twenty-fifth day of September, 1856? Where did her owners reside during that time?

Answer. I did know the ship Protector enquired of in this interrogatory; I acquired my knowledge of the vessel when she was upon the sectional dock, in the city of New York, for repairs, in the month of September, A. D. one thousand eight hundred and fifty-six; I did not know who owned her, nor where the owners resided.

3rd direct interrogatory. State the name and part painted on the stern of said vessel at the time referred to.

Answer. The name painted was Protector; the name of the part I cannot state as I did not look to see.

4th direct interrogatory. Do you know William A. Freeborn & James F. Freeborn and Henry P. Gardien, composing the mercantile firm of William A. Freeborn & Co.? If so, in what city and State do

69 they reside, and where do they carry on their mercantile business?

Answer. I know William A. Freeborn, James F. Freeborn, and Henry P. Gardiner; they compose the mercantile firm of William A. Freeborn & Co.; they reside in the city of New York, and carry on their mercantile business at No. 254 South street, in the city of New York, county and State of New York.

5th direct interrogatory. Look at the account hereto annexed, marked A. Do you know anything of the sale and delivery of the articles therein mentioned? If so, state fully by whom the said articles were sold and delivered, where and when furnished, for what purpose, and how used and disposed of? What was the value or price of the articles so furnished? Are the prices in said account charged, at the dates when said articles were sold and delivered, fair, reasonable, and just prices for the same? Were the articles furnished necessary to make said ship seaworthy?

W. B. DUNLY.

J. C. LAWRENCE, *Com'r.*

70 Answer. I only know of the delivery of the articles sold by William A. Freeborn & Co. to the ship Protector, through me, for the purpose of being put on the bottom of said vessel; I know nothing of the prices or value.

6th direct interrogatory. By whose direction and order were said articles furnished and delivered? Who was then in possession of said ship Protector, and exercised acts of ownership over her? Upon whose or what credit or security were said articles furnished?

Answer. I knew General Berry; he employed me to punch the metal; he exercised the ownership of the vessel at that time; I know nothing farther of the matter enquired of in this interrogatory.

7th direct interrogatory. If you shall say that said articles were furnished to, and delivered for repairs on and finishing the ship Pro-
71 tector, of Bath, in the State of Maine, then lying in the port of New York, state further when said ship leave the port and harbor of New York, and for what port or ports did she sail. Has said ship since returned to the port of New York or to any port in the United States, to your knowledge, until her entry into the port of Mobile recently?

Answer. I do not know when the ship Protector left the port of New York, or where she went to; she never returned to the port of New York or State of New York to my knowledge; I never heard of her being in the United States, except at the time enquired of in this interrogatory.

8th direct interrogatory. If you know, state the fact why the libellants have not heretofore proceeded against said ship for the amount of their claim against her. Was any demand made for payment, and from whom?

W. B. DUNLEY.

J. C. LAWRENCE, *Com'n'r.*

Answer. I do not know anything of the matter enquired of in this interrogatory.

72 9th direct interrogatory. State, if you know, why the ship Protector has not returned to the port of New York since the month of September or October, 1856.

Answer. I do not know anything of the matter enquired of in this interrogatory.

10th direct interrogatory. If you know any other matter or thing which would benefit libellants on the trial of this cause, state the same fully, as though interrogated thereto specially.

Answer. I know it is usual to furnish articles of this kind on the credit of the vessel & owners.

(Signed) WM. B. DUNLEY.

Cross interrogatory:

1st cross-interrogatory. Have you any interest of any kind, either directly or indirectly, in the result of this suit? If yea, what is that interest? Will you not receive some benefit in some shape from
73 the plaintiffs' success, &, if yea, what?

Answer. I have no direct or indirect interest in the result of this suit, and do not expect to receive any benefit from the plaintiffs' success.

2nd cross-interrogatory. If you have stated by whom said ship Protector was owned at any time previous to or during September, A. D. 1856, you will now please state precisely your means of information upon the subject. Is it from being told so by other persons, and, if yea, who told you so, and when was it you were [told] so told, & where, and how did they come to tell you so? Was your information derived from writings, and, if yea, what writings, and where are they? By whom was the ship built, and when, and where? Where were you at that time? Did you ever have anything to do with managing said ship?

W. B. DUNLEY.

J. C. LAWRENCE, *Com's.*

Answer. I have not stated the matters supposed in this interrogatory.

74 3rd cross-interrogatory. If you have stated where the person or persons owning said ship previous to in September, 1856, resided at that time, you will please state precisely also your means of information on that subject.

Answer. I have not stated the matters supposed in this interrogatory.

4th cross-interrogatory. Are you in the employment of William A. Freeborn & Co., and, if yea, how long have you been so? In what capacity were you employed by them in September, 1856, and previous thereto?

Answer. I am not in the employment of Messrs. William A. Freeborn & Co., the plaintiffs in this suit, and was in September, A. D. one thousand eight hundred and fifty-six, or previous thereto.

5th cross-interrogatory. If you have testified as to the sale and delivery of the articles put down in the amount attached to the

75 plaintiffs' interrogatories, or any of them, you will please state if you yourself know of the sale and delivery of every one of the items charged in that account, and if not you will be kind enough to specify the particular articles that you know were sold and delivered, and their respective values. State by whom and to whom they were delivered, and at whose request. State the circumstances of the delivery. State the precise date at which each article was sold and also the date of its delivery.

Ans. I only know of the delivery of the articles charged in the plaintiffs' account; they were delivered by plaintiffs' porter (Thomas Cashare) to me, and were punched by me and delivered to the vessel and put on her bottom on the eighteenth and twenty-fourth days of September, A. D. one thousand eight hundred and fifty-six.

W. B. DUNLEY.

J. C. LAWRENCE, *Com's.*

6th cross-interrogatory. Were or not the articles that were sold

76 sold to one Joseph Berry or to William Berry, and were they or not at that time the owner of said ship?

Answer. I know of no sale to the persons enquired of in this interrogatory.

7th cross-interrogatory. By whom was the arrangement on the part of Freeborn & Co. made for the sale of the articles that were sold? Were you present when that arrangement was made? Did you hear all that was said at the time when that arrangement was made? If you say you did you will now please state exactly what was said on both sides. Who made the arrangement with Freeborn & Co., or the person acting for them, for the purchase? What was the date of that arrangement?

Answer. I was not present, and do not know anything of the matter enquired of in this interrogatory.

8th cross-interrogatory. If you have stated how the articles furnished by plaintiffs were used or disposed of, you will now please state

77 how you know it. Did you see them used or disposed of? If yea, by whom were they so used or disposed of?

Ans. I saw the articles used as stated; they were put on the bottom of the vessel by the ship-carpenter, and I assisted.

9th cross-interrogatory. Who was the master or captain of said ship at the time said goods were furnished? If she had no master or captain at the time, you will please say so. If she had, you will please state his full name and present place of residence.

Answer. I do not know if she had any master or captain.

10th cross-interrogatory. If you have stated that the articles furnished were necessary to make said ship seaworthy, you will please state how you know they were so necessary. Is it from your own knowledge, or merely because you were so informed, and if because you were so informed—

W. B. DUNLEY.

J. C. LAWRENCE, *Com'r.*

78 —who told you so? When and what did he say at the time? Be kind enough to repeat his language, or the substance of it.

Answer. I know of my own knowledge and experience that the articles furnished were necessary to make the ship seaworthy.

11th cross-interrogatory. In what way were the articles furnished by the libellants made use of? Did you see them so used? Are you a judge of the necessity for such articles being used on a ship? If yea, in what way did you require your knowledge on?

Answer. The articles were used by being nailed on the ship's bottom, and I did see them so used. I am a judge of the necessity for such articles being used. I have had an experience of sixteen (16) years in the business. I did work of this character on other vessels, and have done such work for three years. No examination was necessary to see

79 the necessity of this nature, and therefore made no examination.

12th cross-interrogatory. Did you yourself make the sale of the articles specified in the libellants' account attached to their interrogatories? How, then, do you know upon whose or what credit or security said articles were furnished? State precisely your means of information upon this subject.

Answer. I did not make the sale of the articles furnished, and did not and do not know on what security the articles were sold.

13th cross-interrogatory. Were not said articles sold to Joseph Berry and William Berry upon a credit of some three or six months, or some other specified time? Was it not understood or expected at one time that a note or notes would be given for the amount, or a portion of it, or were you not advised of that arrangement?

W. B. DUNLEY.

J. C. LAWRENCE, *Com'r.*

Ans. I do not know anything of the matter enquired of in this interrogatory.

80 14th cross-interrogatory. What has been your means of knowledge as to the movements of the ship Protector since she left the port of New York in the fall of 1856? Do you know where she has been to since? If yea, please state the same.

Answer. I never heard of the ship until I heard of her arrival in Mobile.

15th. If you have stated any reason for libellants not having sooner proceeded against said ship, you will now state when you got the information on that subject. Is it from your own opinion, or from what the plaintiffs, or some of them, have told you?

Ans. I have not stated any of the matters supposed in this interrogatory.

16th cross-interrogatory. If you have stated that any demand was made for payment, and from whom, you will please state all the

81 circumstances attending such demand, from first to last, and state all that was said and done in regard to it. Was there or not a suit commenced and afterwards dismissed or discontinued?

Answer. I do not know anything of the matter enquired of in this cross-interrogatory.

17th. If you have stated any reason for the ship Protector not having returned to New York since September or October, 1856, you will please state all you know upon that subject; state if you are merely stating your opinion on the subject.

Answer. I have not stated anything of the matters supposed in this interrogatory.

18th cross-interrogatory. State anything else within your knowledge likely to be of benefit to the defendant in this suit.

Ans. I do not know of anything more than I have stated that will be of benefit to the defendant in this suit.

(Signed) W. B. DUNLEY.
W. B. DUNLEY.

J. C. LAWRENCE, *Com'r.*

82 STATE OF NEW YORK,
New York City & County, ss:

I, Joseph C. Lawrence, a notary public in and for the State of New York, ex officio United States commissioner, and the commissioner named in the annexed commission, do hereby certify that William B. Dunley, who signed the foregoing deposition, sworn to and subscribed the foregoing deposition in my presence on the thirteenth day of October, A. D. one thousand eight hundred and fifty-nine, at my office in the city of New York, and the same was reduced to writing by me, the said commissioner.

In witness whereof, I have hereunto subscribed my name and affixed my official seal as a notary public of the State of New York and ex officio United States commissioner this 13th day of October, A. D. 1859.

[SEAL.] (Signed) JOSEPH C. LAWRENCE,
Notary Public & ex officio United States Commissioner,
18 *Exchange Place.*

Taking testimony	20 00
Copying	10 00
Recording & postage	3 00
	$33 00

Charged to plaintiff.
(Signed) J. C. LAWRENCE.

83 In the district court of the United States for the southern district of Alabama.

WILLIAM A. FREEBORN & Co.'
vs.
SHIP PROTECTOR.

Examination and deposition of witness produced, sworn, and examined by the undersigned commissioner, in virtue of the annexed commission issuing out of the honorable the district court of the United States for the southern district of Alabama, taken and reduced to writing by me, the said commissioner, at his office in the city of New York, county and State of New York, on the twenty-sixth day of October, A. D. one thousand eight hundred and fifty-nine.

GEORGE W. KENDALL, aged forty-five years, being duly sworn, deposes and says as follows, in answer to the direct and cross interrogatories propounded to him:

GEO. W. KENDALL.

JOSEPH C. LAWRENCE, *Commissioner.*

1st direct interrogatory. What is your name, age, place of residence, and business or profession?

Answer. My name is George W. Kendall; I reside in the city
84 of Brooklyn, Kings County, State of New York; I am forty-five years of age, and am a ship-broker by profession.

2 interrogatory. Did you know a ship or vessel called the ship Protector, built in the State of Maine, which vessel was lying in the port of New York previous to and during the month of September, 1856? If so, under what circumstances did you acquire your knowledge of said vessel? By whom was she owned from the time you first knew her up to the twenty-fifth day of September, 1856? Where did her owners reside during that time?

Answer. I did know a ship or vessel called the ship Protector, referred to in this interrogatory. I knew the builder; I knew said ship was built by Joseph Berry; she was owned principally by Joseph Berry, and one-eigth of said ship was owned by his son William M. Berry; both resided in Maine during the time the ship was being built.

85 3d interrogatory. State the name and part painted on the stern of said vessel at the time referred to.

Answer. I cannot state the name of the part painted on the stern of said ship Protector referred to this interrogatory.

4th interrogatory. Do you know William A. Freeborn, James F. Freeborn, and Henry P. Gardiner, composing the mercantile firm of William A. Freeborn & Co? If so, in what city and State do they reside, and where do they carry on their mercantile business?

Answer. I know William A. Freeborn, James F. Freeborn, and Henry P. Gardiner; they compose the mercantile firm of William A Freeborn & Co., the libellants in the above-entitled cause; they reside in the [in the] city of New York, and carry on their mercantile business at number two hundred and fifty-four (254) South street, in the city of New York, county and State of New York.

GEO. W. KENDALL.

JOSEPH C. LAWRENCE, *Commissioner*.

86 5th interrogatory. Look at the account here annexed, marked A. Do you know anything of the sale and delivery of the articles therein mentioned? If so, state fully by whom the said articles were sold and delivered, when and where furnished, for what purpose, and how used and disposed of. When was the value or price of the articles so furnished? Are the prices in said account charged, at the dates when said articles were sold and delivered, fair, reasonable, and just prices for the same? Were the articles furnished necessary to make the said ship seaworthy?

Answer. I do not know anything of the matter enquired in this interrogatory.

6th interrogatory. By whose directions and order were said articles furnished and delivered? Who was then in possession of said ship Protector and exercising acts of ownership over her? Upon whose or what credit or security were said articles furnished?

87 Answer. In answer to the matters enquired of in this interrogatory, I can only say that I only know that Joseph Berry and William M. Berry were, I suppose, in possession of the ship Protector; I know nothing further enquired on this interrogatory.

7th. If you shall say that said articles were furnished to and delivered for repairs on and furnishing the ship Protector, of Bath, in the State of Maine, then lying in the port of New York, state further when did said ship leave the port and harbor of New York, and for what port or ports

did she sail. Has said ship since returned to the port of New York, or to any port of the State of New York, to your knowledge, until her entry into the port of Mobile recently?

Answer. The ship Protector left the port of New York shortly after the date mentioned in the second interrogatory, September twenty-fifth, A. D. one thousand eight hundred and fifty-six (1856), and did not return to the United States until her return to the port of Mobile, State of Alabama.

GEO. W. KENDALL.

J. C. LAWRENCE, *Commissioner.*

88 8th interrogatory. If you know, state the fact why the libellants have not heretofore proceeded against said ship for the amount of their claim against her. Was any demand made for payment and from whom?

Answer. All I know why the libellants did not proceed against the ship before was, they were waiting for her return, and made several applications to deponent when she would return and where she was.

9th. State if you know why the said ship Protector has not returned to the port of New York since the month of September or October, 1856.

Answer. The reason the ship Protector did not return to the United States was that she was employed on long voyages; she went from New York to London, from London to San Francisco, California, from thence she went to the Chinchi Islands and back to London.

89 10 interrogatory. If you know any other matter or thing which would benefit libellants on the trial of this cause state the same fully, as though interogated thereto specially.

Answer. On or about the twenty-ninth day of August, A. D. one thousand eight hundred and fifty-six, James W. Phillips made an advance to Joseph Berry, and took a bill of sale of said ship Protector to secure their debt, and made an agreement with the said Berry that he (James W. Phillips) would reconvey the said ship Protector, on the payment of the liability of the said (Joseph Berry); the earnings were to go to Berry, and the right of Berry to reconvey, and was assigned to the firm of Kendall, Richardson & Co., of which firm I am a member. He, the said James W. Phillips, being the sole owner of the ship Protector on the 25th September, A. D. 1856, as per certified copy of register, hereunto annexed, marked B, to which reference is made, as was of evidence.

(Signed) GEO. W. KENDALL.

90 Cross-interrogatories:

1st cross-interrogatory. Have you any interest of any kind, either direct or indirect, in the result of this suit? If yea, what is that interest? Will you not receive some benefit in some shape from the plaintiffs' success, &, if yea, what?

Answer. I have no interest of any kind, either directly or indirectly, in the result of this suit, and do not expect to receive any benefit from plaintiffs' success; if I have any interest at all, it is to prevent the recovery of the amount of their claim.

2 cross-interrogatory. If you have stated by whom said ship Protector was owned at any time previous to or during September, A. D. 1856, you will now please state precisely your means of information upon the subject. Is it from being told so by other persons, and, if yea,

91 who told you so, and when was it you were so told, and where and how did they come to tell you so? Was your information derived from writings, and, if yea, what writings, and where are

they? By whom was the ship built, and where, and when? Where were you at that time? Did you have anything to do with managing said ship?

Answer. My information is derived from my knowing who built the ship Protector, from residing in the neighborhood where the said ship was built, and from supplying her with materials towards her construction, and knowing who was in possession and managing for her. The ship was built in the State of Maine; I think she was built in the year one thousand eight hundred and fifty-four; I never had anything to do with the management of the said ship Protector.

3d cross-interrogatory. If you have stated where the person or persons owning said ship previous to or in September, A. D. 1856, resided at that time, you will please state precisely your means of information on that subject.

GEO. W. KENDALL.

J. C. LAWRENCE, *Comm'r.*

92 Ans. My means are derived from the sources mentioned in my answer to the second cross-interrogatory, to which I refer as my answer to this cross-interrogatory.

4th cross-interrogatory. Are you in the employment of William A. Freeborn & Co., and, if yea, how long have you been so? In what capacity were you employed by them in September, 1856, and previous thereto?

Answer. I am not at this time in the employment of the firm of William A. Freeborn & Co., and was not in their employ in the month of September, A. D. one thousand eight hundred and fifty-six, or previous thereto, & never have been in their employ.

5th cross-interrogatory. If you have testified as to the sale and delivery of the articles put down in the answer attached to the plaintiffs' interrogatories, or of any of them, you will please state if you yourself know of the sale and delivery of every one of the items charged in that

93 account, and if not you will be kind enough to specify the particular articles that you know were sold and delivered, and at whose request. State the circumstances of the delivery. State the precise date at which each article was sold, and also the date of its delivery.

Answer. I do not know anything of the matters enquired of in this fifth cross-interrogatory.

6th cross-interrogatory. Were or not the articles that were sold, sold to one Joseph Berry, or to Joseph Berry and William Berry, and were they or not at that time the owners of said ship?

Answer. In answer to the matters enquired of in this cross-interrogatory I can only say that Joseph Berry and his son William M. Berry were the owners of the ship Protector.

GEO. W. KENDALL.

J. C. LAWRENCE, *Comm'r.*

7th cross-interrogatory. By whom was the arrangement, on the

94 part of Freeborn & Co., made for the sale of the articles that were sold? Were you present when the arrangement was made? Did you hear all that was said at the time when that arrangement was made? If you say you did, you will please state exactly what was said on both sides. Who made the arrangement with Freeborn & Co., or the person acting for them, for the purchase? What was the date of that arrangement?

Answer. I do not know anything of the matter enquired of in this interrogatory.

8th cross-interrogatory. If you have stated how the articles furnished

by plaintiffs were used or disposed of, you will now please state how you know it. Did you see them used or disposed of? If yea, by whom were they so used or disposed of?

Answer. I do not know anything of the matter enquired of in this cross-interrogatory.

95 9th cross-interrogatory. Who was the master or captain of said ship at the time said goods were furnished? If she had no master or captain at the time, you will please say so. If she had, you will please state his full name and present place of residence.

Answer. I think a person by the name of Colter was master of the ship Protector at the time enquired of in this interrogatory; I cannot state his full name or place of residence.

10th. If you have stated that the articles furnished were necessary to make said ship seaworthy, you will please state how you know they were so necessary. Is it from your knowledge, or merely because you were so informed? Who told you so, and when and what did he say at the time? Be kind enough to repeat his language or the substance of it.

GEO. W. KENDALL.

J. C. LAWRENCE, *Comm's.*

96 Answer. I have no knowledge of the particular necessity of the articles furnished, and only know of the necessity of them from the ship having run so long as she was run that it would be necessary to metal her.

11th interrogatory. In what way were the articles furnished by the libellants made use of? Did you see them so used? Are you a judge of the necessity for such articles being used on a ship? If yea, in what way did you require your knowledge on the subject? Did you yourself do work of that sort upon a vessel? If yea, when and where, and for how long a time, and how long ago? Did you examine this ship yourself to see if there was a real necessity for this work being done upon her? If yea, what induced you to do so, and where did you make the examination?

Answer. I know nothing from personal observation of the vessel, and can only judge from my ownership and interest derived from my business in vessels.

97 12th. Did you yourself make the sale of the articles specified in the libellants' account attached to their interrogatories? How then do you know?

Ans. I do not know anything of the matter enquired of in this interrogatory.

13th cross-interrogatory. Were not said articles sold to Joseph Berry and William Berry, upon a credit of some three or six months, or some other specified time? Was it not understood or expected at one time that a note would be given for the amount, or for a good portion of it; or were you not advised of that arrangement?

Answer. I know nothing of the matter enquired of in this cross-interrogatory.

14th cross-interrogatory. What has been your means of knowledge as to the movements of the ship Protector since she left the port of New York, in the fall of 1856? Do you know where she has been to since? If yea, please state the same.

GEO. W. KENDALL.

J. C. LAWRENCE, *Commissioner.*

98 Answer. My means of knowledge as to the movements of the ship Protector is the same as is mentioned in my answer to

the tenth cross-interrogatory. She went from New York to London, thence to San Francisco, California, thence to Chinchi Island, from thence to London again, and, after lying in London some time, my impression is she went to Mobile.

15th. If you have stated any reason for libellants not having sooner proceeded against said ship, you will now state where you got your information on that subject. Is it from your own opinion or from what the plaintiffs, or some of them, have told you?

Ans. My answer and reason for stating why the libellants have not proceeded against the ship before was, that she was not within their reach, and that they were constantly making enquiries after her.

16th. If you have stated that any demand was made for payment, and from whom, you will please state all the circumstances at-
99 tending such demand, from first to last, and state all that was said & done in regard to it. Was there or not a suit commenced and afterwards dismissed or discontinued?

Answer. I know nothing of the matter enqaired of in this cross-interrogatory.

17th. If you have stated any reason for the ship Protector not having returned to New York since September or October, 1856, you will please state all you know upon that subject. State if you are not merely stating your opinion on the subject.

Answer. The only reason I can give is already given in my answer in the fourteenth cross-interrogatory, to which I refer as my answer to this cross-interrogatory.

18th cross-interrogatory. State anything, everything else within your knowledge likely to be of benefit to the defendant in this suit.

GEO. W. KENDALL.

J. C. LAWRENCE, *Commissioner.*

Ans. I cannot state anything more than I have stated in my answers to the foregoing cross-interrogatories that will benefit the defendant in this suit.

(Signed) GEO. W. KENDALL.

100 STATE OF NEW YORK,
New York City, County, ss:

I, Joseph C. Lawrence, a notary public in and for the State of New York, duly commissioned and sworn, and ex officio commissioner for the United States of America, and the commissioner named in the annexed commission, do hereby certify that George W. Kendall, who signed the foregoing deposition, swore to and subscribed the same deposition in my presence, on the twenty-seventh (27) day of October, A. D. one thousand eight hundred and fifty-nine, at my office, number eighteen Exchange Place, in the city of New York, county & State of New York, and the same was reduced to writing by me, the said commissioner.

In testimony whereof, I have hereunto subscribed my name and affixed my notarial seal as a notary public of the State of New York, and ex officio United States commissioner, this twenty-eighth day of October, A. D. one thousand eight hundred and fifty-nine.

[SEAL] (Signed) JOSEPH C. LAWRENCE,
Notary Public.

101 DISTRICT AND PORT OF NEW YORK, *Collector's Office:*

I hereby certify that the register of ship Protector, granted in Bath, Dec. 11th, 1855, was surrendered at this office and a new

register issued to said ship "Protector," in the name of James W. Phillips, sole owner, on the 25th Sept., 1856, & No. 570, that being the first register for said ship granted at this port; and that the bills of sale from Wm. M. & Joseph Berry to James W. Phillips were recorded in this office Sept. 25th, 1856.

Given under my hand & seal this 28th October, 1859.

[SEAL.] (Signed) J. WHITE, *D. Collector.*

M. R. B.

STATE OF NEW YORK,
New York City & Owners:

I, Joseph C. Lawrence, a notary public in and for the State of New York, duly commissioned and sworn, dwelling in the city of New
102 York, do hereby certify that the foregoing is a true copy of the slipp proven, and that J. White, whose name is subscribed to the same as deputy collector, is fully allowed to sign the same.

In witness whereof, I have hereunto subscribed my name and affixed my notarial seal this 28 day of October, A. D. 1859.

JOSEPH C. LAWRENCE,
Notary Public.

Commissioner's fees	20
Copying testimony	10
Recording, &c	3
	$33

Charged to plaintiffs.

J. C. LAWRENCE, *Com'n'r.*

103 UNITED STATES OF AMERICA,
Southern District of New York,
City, County, and State of New York, ss:

Be it remembered that on this 2nd day of April, in the year of our Lord one thousand eight hundred and fifty-nine, I, Charles W. Newton, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, did call and cause to be and personally appear before me, at my office at No. 74 Wall street, in the city of New York, in the said southern district of New York, in the State aforesaid, Rowland W. Griffiths to testify and the truth to say on the part
104 and behalf of the libellants in a certain suit or matter of controversy, now depending and undetermined in the district court of the United States for the district of Alabama, wherein William A. Freeborn & others are libellants, & the ship Protector, her tackle, &c., are respondants.

And the said Rowland W. Griffith, being about the age of thirty-five years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, I did carefully examine the said Rowland W. Griffith, and he did thereupon depose, testify, and say as follows, viz:

I am a shipwright of the firm of Rosouel & Griffiths; I have been in

the firm some seven years; I know the ship Protector; I have done work on her—caulked & coppered the ship Protector; the copper came from Donally's punching shop, & from Freeborn & Co.; then the ship was in the port of New York when it was put on.

105 Q. At the time you performed the work on this vessel, when the copper was put on, who acted as the owner of the vessel, & where did she hail from?

(Obj'n.)

A. Gen'l Berry acted as owner; I think his name is Joseph; he hailed from Bath, Maine. Berry employed me to do the work I done on her; this work was performed & copper put on in Sept., 1856.

Q. Was or not the coppering of her necessary or proper for the business in which she then was engaged?

A. Yes, sir. I did not keep account of the amount of copper put on; the copper man keeps that account. I have been engaged in preparing & furnishings ships in New York for seven years.

Q. Is there or not any custom in the port of New York as on what credit such supplies & repairs are furnished?

(Obj'n.)

A. Yes, sir.

Q. What is the custom?

(Obj'n.)

A. The custom is that if the owner fail we come on the ship.

106 Q. State what the custom is more fully.

(Obj'n.)

A. On the vessels & owners.

(Signed) R. W. GRIFFITHS.

Cross-examined:

I don't know how long the ship Protector had been in New York when I put the copper on her; I might have seen her two or three weeks or longer before I put the copper on her; I think she was laying then near pier 45 or 47, East River.

Q. On what knowledge did you found your answer on your direct examination that the Protector hailed from Bath, Maine, when you put the copper on her?

A. Being on her stern.

Q. Have you any other knowledge as to where she was registered, where her owner or owners resided, or as to where she hailed from?

A. No, sir.

Q. Was she not at this time undergoing a general overhauling & repairs in the port of New York?

A. Nothing more than caulk & copper was all the repairs that

107 was done to her at this time; there might have been a few other trifling things.

Q. Do you know whether or not other repairs than caulking & coppering was done to her during her stay in this port on that occasion?

A. Not as I know of any; I did not see any; the ship had a captain at this time; as to a crew, I can't say.

Q. What was the name of her captain?

A. I could not tell you, but my partner could; his memory is good; I don't know how long he had been capt., nor how long he continued so.

Q. By whose directions, & under whose employment, did you do the work which you did on this vessel?

A. Mr. Berry.

Q. Was he ever present in New York at this time?
(Obj. int. not as leading.)
A. Yes. Mr. Berry was a ship-builder; I do not know to what extent he was a ship-owner; he was a ship-owner to a heavy am't; we have repaired a great many ships for him.

Q. Do you know what his pecuniary credit & standing was?
108 A. It was considered good at the time we repaired the ship—that is, we considered so; I think I had known him five years; it might have been longer; we had dealed with him from fifty dollars up to six & seven hundred dollars at a time; a vessel would come in & we would repair her, & the bill might be fifty dollars or perhaps one thousand dollars; if it were ten thousand dollars we would not question him; we knew we should hold the vessel; we never question a man about his responsibility; we took a note for the work we did on the vessel; I think the note called for six or seven hundred dollars; I think it was a six months' note; it was paid; it was made payable to James W. Phillips' order; I have taken his notes without an endorser; we have one now; I could not say whether it is six hundred or a thousand; it was given for labor on a vessel; I think it was a six months' note; was taken before we done the work on the Protector.

Q. When you say this is a custom in the port of New York by
109 which supplies are furnished to a vessel are upon the credit of the vessels and owners, on what do you found that statement?
A. I could not say, any more than we [we] would file our bill if we had doubts of her owner.
Q. What do you mean by filing your bill?
A. To make the lien good.
Q. State what you mean by filing your bill.
A. We put a notice of a lien on file in the county clerk's office.
Q. Is that a thing you are accustomed to do yourselves, or do you employ a lawyer?
A. We get it done through a lawyer.
Q. When you say that if you have any doubts about the owners you file this lien; do you mean that if you are afraid to hurt the owners upon their personal responsibility you file your bill in the county clerk's office in order to preserve your lien?
A. Yes.

Q. Were you in the habit of filing your bills or liens when you
110 did work on ships for Gen'l Berry?
A. No, sir.

Q. When you undertake to say there is a custom in this city or port by which the ship and owners are liable for repairs or supplies, do you mean to say that there is any custom giving a lien on a ship beyond the lien which the law gives?
(Obj'n.)
A. I could not answer that; the only custom I know of is that I have been informed we must file am't bill.
Q. Do you know any custom beyond or in addition to the law?
A. No; I don't know that I do.
Q. At the time you put the copper on the Protector, what was the general reputation of Gen'l Berry as a man of property, responsibility, or otherwise?
(Obj'n.)
A. We considered him good at the time we done the work, as far as I know.

Q. Would you have hesitated to trust him on his own responsibility for three or four thousand dollars at that time?
(Obj'n.)
A. I don't feel like answering that.
(Signed) R. W. GRIFFITHS.

111 APRIL 23*rd*, 1859.—M. Donahue, counsel for libellants, recalls—

Mr. GRIFFITHS.

Q. Did you firm ever do any work for Mr. Berry or his ships on his credit & not that of the vessel?
(Obj'n.)
A. No, sir.
Q. Would you or your firm have done any work on his ships & release his vessels at that time?
(Obj'n—as leading.)
A. No, sir.
Q. For all the work which you have testified to on your cross-examination, as done for him, did you or not suppose you had a lien on his vessels?
(Obj'n—as leading.)
A. Yes, sir; I would not do any work in any other way for any one; I consider the vessel as always good for it.
Q. You say on your cross-examination that you are not in the habit of filing your bills or liens for work on ships of Gen'l Berry. Did you consider it necessary to file them?
A. No, sir.
Q. Why not?
A. Because she was a foreign vessel.
112 Q. Against what class of vessels did you consider it necessary to file your liens or claims?
A. Domestic vessels.

Re-cross resumed:

Q. From whom did you learn of this distinction between foreign & domestic vessels in respect to the lien for repairs or supplies?
A. From those who have been in business before me.
Q. Since you gave your testimony in this case a few days since, have you had any conversation on subject of this diffirence between foreign & domestic vessels, &, if so, with whom?
A. No, sir.
Q. How comes it that you now have an unpaid claim against Gen'l Berry for work done a vessel?
A. We took a note from him; it came due & he could not meet it, & asked us to renew it six months longer, which I done. The vessel has been away & has never returned since.
Q. State the am't of that note, as nearly as you can recollect.
113 A. It might be from eight to twelve hundred dollars, I can't say which; we have the note up at the office.
Q. Was the ship for repairs on which that note was given a foreign or domestic vessel?
A. Foreign vessel.
Q. State as nearly as you can when the work for which that note was given was done.

A. I can't do it; I don't remember; it was before we coppered the last ship, the Protector, I think.

Q. Do you know the name of the ship for the work of which that note was given?

A. I can't say; I have no recollection whatever.

Q. How long had you that note to run—I mean the note first given, which was afterwards renewed?

A. I think it was six months.

Q. When it became due was it protested or dishonored?

A. No, sir; he came to me & told me he could not take care of it, & asked me if I would not renew it for him.

Q. Did any one else besides Gen'l Berry apply to you in regard
114 to that renewal?

A. No, sir.

Q. Do you know whether or not you did work on any other vessel for Gen'l Berry after you did this work on the Protector?

A. No, sir; I believe that was the last.

Q. Do you know that it was the last?

A. I believe that was the last; I am quite certain.

Q. Was it after you did the work on the Protector that you renewed the other note?

A. No, sir; before.

Q. When you renewed the other note, did you consider Gen'l Berry good?

A. I had my doubts about him, but I did not say anything about him; I knew the ship was good, & I would do it again, because I consider the ship is good at all times.

Q. Did you consider, when you took this note at six months & afterwards renewed it for six months more, that [that] your lien on the vessel was not effected by those circumstances?

A. There is where I think I am a little lame—in renewing that
115 note; still I am a going to try it on.

Q. When you renewed the note, did you or not rely upon preserving your lien upon the vessel as security for that debt?

A. Yes, sir.

Q. Have you ever attempted since then to keep track of that vessel?

A. Yes, sir.

Q. How comes it then that you could not give me her name when I asked it a few minutes ago?

A. My partner keeps the run of that & I could not give it any other time.

Q. How long is it since that renewal note was protested?

A. I can't answer that.

Q. Have you not for a long time past considered the am't of that note a bad debt, & did you not so speak of it on other days?

A. Yes, sir; because I thought the ship would never come here again.

Q. Is it then your understanding that in order to enforce the lien you speak of on a foreign vessel, that you must wait until she comes back to this port?

116 A. No, sir.

Q. You have stated that you have for some time past considered this a bad debt, & have likewise stated that you intend to make the attempt to recover it from the vessel. Do you intend to wait before you try that to see the result of this attempt of M. Freeborn?

A. No, sir.

Q. When did you come to this determination to attempt to recover this debt from the vessel?

A. That was always my intention if I see fit to enforce it.

Q. Can you state any act done by yourself or partner with a view of finding out what has become of that vessel, for the purpose of libelling her for that claim?

A. I decline answering that.

(Signed) R. W. GRIFFITHS.

APRIL 23*d*, 1859.—Libellants' counsel calls as a witness on the part of libellants—

WILLIAM DUNLEY, who, being duly sworn, says:

I am a copper & metal puncher; I know William A. Freeborn
117 & Co., & know the ship Protector. I know of some metal that went on this ship, which was furnished by William A. Freeborn & Co.; it went through my hands. I punched it & delivered it to the ship; that is, furnished it to Rosavelt & Griffiths for the ship's bottom, who put it on the ship.

(Signed) WM. B. DUNLEY.

On this same day libellants' counsel calls as a witness on the part of libellants—

SAMUEL T. MOORE, who, being duly sworn, says:

I am clerk with William A. Freeborn & Co. I know the ship Protector, & saw the metal sold to the ship, & also saw it delivered to her, & I charged it on their books. There was two thousand & forty or fifty sheets delivered—there was two thousand & fifty sheets sold & delivered to her; it was twenty-three cents per pound.

Cross-ex:

I saw it delivered to the puncher, William B. Dunley. Mr. Freeborn
porter, Thomas Cashare, delivered it; all the copper delivered to
118 the ship Protector was delivered by this porter.

Re-ex:

I charged it immediately after it was delivered on my books.

(Signed) S. T. MOORE.

Adjourned to Ap'l 28th, 3 o'clock, by consent of counsel.

APRIL 28*th*.—Parties appear pursuant to adjournment, & Mr. Donahue, counsel for libellant, calls as a witness—

DANIEL T. WILLETTS, who, being duly affirmed, says:

I am in the commission & hardware business in this city; yellow metal & copper we deal in. I have been in the habit of supplying vessels; have been in the business for twenty years, supplying vessels, &c.

Q. Is there any custom or usage in the port of New York in supplying vessels with copper & yellow metal, as to the credit on which it is done—in case of vessels not belonging to the port?

119 (Mr. Southmayd, counsel for resp'd'ts, objects to the question.)

A. Yes, sir, there is.

Q. What is that custom?

(Obj'n.)

A. The custom is to always charge it to the vessels & owners.

Q. How is it as to the credit on which it is done?
(Obj'n.)
A. It is done upon the credit of the vessel as well as the owners.

Cross-ex. by counsel for respondant:

Q. Do you undertake to state there is any custom in this port which gives a lien upon any vessel, whether foreign or domestic, for copper & yellow metal furnished to her, except such lien as arises by and in accordance with the rules of the law for ordinary supplies furnished a vessel?
A. I have always understood it to be the custom that we could hold vessels, foreign to the port of New York, liable for copper & yellow metal furnished, at any time we could find them.
Q. Have you understood that there is any diffirence in this respect in favor of copper or yellow metal over any other supplies fur-
120 nished to a vessel foreign to New York?
A. No, sir.
Q. When you say you have always understood it to be the custom that you could hold a vessel liable under the circumstances you mentioned, do you mean anything more than that you have always understood that that was the law?
(Obj. by libellants' counsel.)
A. I have always understood that to be the law.
Q. Do you undertake to say there is any custom apart from the law, &, if so, upon what do you found such a statement?
A. None that I know of.

Re-examined by libellants' counsel:

Q. On what credit are such supplies sold in New York?
(Obj'n.)
A. They are sold upon the credit of the vessel & owners.

Re-cross e.-resumed:

Q. On what was your last answer founded?
A. On custom.
121 Q. Any other custom than that that you have before mentioned as founded upon the law, as you understand it?
(Obj'n by libellants' counsel.)
A. I can only answer that by saying our practice is to charge such supplies to the vessel & owners.
Q. Is this, your evidence of custom which you have given in this case, founded merely upon the fact that you are accustomed to charge such supplies to the vessel & owners, & that your understanding of the law is, that you have a right to hold the vessel under such circumstances?
A. It is both our custom & our understanding of the law.
Q. And is it upon that custom of yours, & that understanding of yours, that your evidence in regard to custom is based?
A. It is upon that & upon the custom of others it is based.
Q. What knowledge have you of the custom of others?
A. By seeing charges upon their books.
Q. What instances of this can you state?
A. Without calling any particular case to mind, I can say that
122 I have seen hundreds. I can state it as a universal practice of merchants doing that kind of business.
Q. Is it not the custom when supplies are furnished a vessel, whether she be foreign or domestic, to charge the supplies to the vessel & owners?
A. Always.

Q. Is it any the more customary in the case of a foreign & domestic vessel?

A. No, sir, not any.

Q. Do you know whether or not there is & has been, ever since you have been in business, a statute in this State which gives a lien on all vessels for supplies?

A. I have always understood such to be the case, but that such lien upon vessels belonging to such port only existed until they left the State.

Q. Have you not then always understood that when a vessel, whether foreign or domestic, was in this port, obtained supplies here, the law gave a lien upon her for such supplies?

A. I have always understood that the law gave a lien upon
123 domestic vessels until they left the State, & upon foreign vessels until the bill was paid.

Q. I again ask you whether in giving evidence of custom you do not found it upon what you understand it to be the law?

A. I do; & upon the custom of others doing the same kind of business.

Q. The custom of others to do what?

A. To charge the supplies to the vessels & to the owners.

Q. And is not such custom applicable to all vessels, foreign & domestic?

A. Yes, sir.

(Signed) DAN'L T. WILLETS.

Adjourned to 3 o'clock, April 29th.

AP'L 29*th*, 3 *o'clock*.—Parties appear, & Mr. Donahue calls as a witness on the part of libellant—

HENRY R. SECOR, who, being duly sworn, says:

I am a shipwright in the city of New York; I have been in business in this city some thirty years; before I was in the business I had some knowledge of the business.

124 Q. Is there or not in the port of New York any custom or usage as to on what credit supplies are furnished & work done on vessels not belonging to this State?

(Obj'n by resp'd't's counsel.)

A. Yes; on the credit of the vessel. That has been so as long as I have been in the business.

Cross-examined by respondent's counsel:

No. 1. Q. Do you undertake to state that there is any custom in this port which gives a lien upon any vessel, whether foreign or domestic, for supplies or materials furnished, except such lien as arises by and in accordance with the rules of the law for ordinary supplies furnished the vessel?

A. Yes, sir.

Q. By your affirmative answer to the last question, do you mean anything more than that you have always understood that that was the law?

A. Yes sir; I always understood it to be the custom.

Q. State what you understand to be the custom.

125 A. The custom is that when a vessel comes into port & I am called upon to furnish her I do it on the credit of the vessel & owners.

(Signed) HENRY R. SECOR.

NICHOLAS LAWSON, a witness produced on the part of the libellants, being duly sworn, says:

I am engaged in the shipwright, caulking, & spar-making business in this city; I have been engaged in that business ten years.

Q. Is there or not in the port of New York any custom or usage in the repairing of vessels or furnishing supplies, where the vessel does not belong to this State, as to the credit on which it is done?

(Obj'n by respondent's counsel.)

A. Yes, there is a custom.

Q. What is it?

(Obj'n by respondent's counsel.)

A. To hold the vessel & owners.

Cross-examined by respondent's counsel:

Q. No. 1. (As given to Mr. Secor in last deposition.)

126 A. I don't know how far the law bears on it; if I do work on a vessel in this port, on a foreign vessel, I always make the captain give me a draft on the owners & have it accepted by them. I would not take a draft unless I would be satisfied it would be good.

(Signed) NICHOLAS LAWSON.

AP'L 29*th*.—Libellants' counsel calls as a witness—

JAMES B. NICHOLSON, who, being duly sworn, says:

I am the agent of the New York Ballance Dock Co.; vessels are repaired on our docks of all classes, from the largest to the smallest. I have been agent for one or more docks some twelve years.

Q. Is there or not in the port of New York any custom or usage as to on what credit supplies are furnished & work done on vessels not belonging to this State?

(Obj'n by respondent's counsel.)

A. There is a custom.

Q. What is it?

(Obj'n.)

A. On the credit of the ship & owners.

Cross-ex. by respondent's counsel:

127 Q. No. 1. (As given to Mr. Secor in his deposition hereto annexed.)

A. So far as the law is concerned, we know nothing about it; but the custom which we carry out is to hold the vessel & owners responsible for the work we do.

Q. Do you undertake to say there is any custom apart from the law, &, if so, upon what do you found such a statement?

A. I undertake to say the custom is as I have stated before; I found such a statement upon the custom of the port of New York for the last twelve years; it is a universal custom; I know of not a single exception amongst those who furnish ships, either in the way of repairs or supplies.

Q. Is then your evidence of custom, which you have given in this case, founded merely upon the fact that you are accustomed to charge such supplies to the vessel & owners, & that your understanding of the law is that you have a right to hold the vessel under such circumstances?

(Obj'n to by libellants' counsel.)

A. It is, in the first place, in accordance with the manner in which I

do business; & secondly, it is the universal custom & has been
128 during the time that I have been connected with the commerce of this port, during the last twenty years.

Q. Is it any the more customary in the case of a foreign or domestic vessel?

A. It applies to all vessels; we don't make any distinction.

(Signed) J. B. NICHOLSON.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, Charles W. Newton, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February
129 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, do hereby certify that the reason for taking the foregoing deposition is, and the fact is, the witnesses' testimony is material and necessary in the cause in the caption of the said deposition named, and that they each reside more than one hundred miles from the place designated for the trial of this cause.

I further certify that a notification of the time and place of taking the said deposition, signed by me, was served on the counsel for claimant, to be present at the taking of the said deposition, and to put interrogatories, if he or they might think fit.

I further certify that on the 2nd day of April, in the year of our Lord one thousand eight hundred and fifty-nine, I was attended by the
130 counsel for respective parties, and by the witnesses, who were of sound mind and lawful age, and the witness were by me first carefully examined and cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, and the depositions were by me reduced to writing in the presence of the witnesses and counsel, and, after carefully reading the same to the witness, they subscribed the same in my presence. I have retained the said deposition in my possession for the purpose of transmitting the same with my own hand, by mail, the court for which the same were taken. And I do further certify that I am not of council nor attorney for either of the parties in the said deposition and caption named, nor in any way interested in the event of the cause named in said caption.

In testimony whereof, I have hereunto set my hand and seal this 2nd day of April, in the year of our Lord one thousand eight hundred and fifty-nine, and of the independence of the United States the eighty-third.

(Signed) CHAS. W. NEWTON,
United States Commissioner, duly appointed by the Circuit Court of the United States for the Southern District of New York, in the Second Circuit.

131 UNITED STATES OF AMERICA,
Southern District of New York,
City, County, and State of New York, ss:

Be it remembered that on this 2nd day of April, in the year of our Lord one thousand eight hundred and fifty-nine, I, Charles W. Newton,

a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the act of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, did call, and cause to be and personally appear before me, at my office at No. 74 Wall street, in the city
132 of New York, in the said southern district of New York, in the State aforesaid, Thomas Cashare, to testify and the truth to say on the part and behalf of the libellant in a certain suit or matter of controversy now depending and undetermined in the district court of the United States for the district of Alabama, wherein William A. Freeborn & others are libellants, & the ship Protector, her tackle, &c., are respondent.

And the said Thomas Cashare, being about the age of thirty-two years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, I did carefully examine, and he did thereupon depose, testify, and say as follows, viz:

I am porter for William A. Freeborn & Co., of the city of New York; I have been porter for eleven or twelve years; I have seen the ship Protector; I delivered yellow metal to her; I have a memorandum of the am't delivered; I delivered twenty cases of it—there is five of
133 them of eighteen oz., one hundred and fifteen in each case, & five cases of twenty oz., of one hundred sheets in each, & five of twenty-two oz., of one hundred in each case, & five of twenty-four oz., of eighty-five sheets in each case; there were loose sheets of which I have no memorandum of. I delivered them on the 18th of September, 1856; the ship I can't say whether she was on the dock or in the water at the time I delivered them; I delivered it from Mr. Wm. A. Freeborn & Co. store.

(Signed) THOS. CASHARE.

Cross-examination:

The book is here shown to witness, & he says: It is the book in which I memorandum at this time; all this copper I believe was delivered on the same day; I remember the ship when she was on the dock, & remember delivering the copper to her; I think the ship was at the foot of Clinton st. at the time of the delivery; I delivered the copper to a Mr. Donally, who is a puncher; we put it on a truck, and run it over to the puncher.

Q. When you say you delivered this yellow metal to the ship,
134 what do you mean; to whom did you actually deliver it, & whose possession, & at what place did you leave it?

A. Mr. Donally's punching shop.

Q. Where is that?

A. I don't recollect to which shop I delivered it, but it was to one of the punching shops of Mr. Donally.

Re-direct resumed:

Q. For whom or what ship did you leave it there?

(Obj'n.)

A. The ship Protector.

Cross-ex:

Q. What did you do manifesting that it was for the ship Protector?
A. I don't remember.

(Signed) THOS. CASHARE.

135 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, Charles W. Newton, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, do hereby certify that the reason for taking the foregoing deposition is, and the fact is, the witness' testimony is material and necessary in the cause in the caption of the said deposition named, and that he resides more than one hundred miles from the place designated for the trial of this cause.

I further certify that a notification of the time and place of
136 taking the said deposition, signed by me, was made out and served on the counsel for respondents to be present at the taking of the said deposition, and to put interrogatories, if he or they might think fit.

I further certify that on the 2d day of April, in the year of our Lord one thousand eight hundred and fifty-nine, I was attended by the counsel for respective parties and by the witness, who was of sound mind and lawful age, and the witness was by me first carefully examined and cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, and the deposition was by me reduced to writing in the presence of the witness and counsel, and, after carefully reading the same to the witness, he subscribed the same in my presence. I have retained the said deposition in my possession for the purpose of transmitting the same, with my own hand by mail, the court for which the same was taken.

And I do further certify that I am not of council or attorney for either of the parties in the said deposition and caption named,
137 nor in any way interested in the event of the cause named in said caption.

In testimony whereof, I have hereunto set my hand and seal this 2d day of April, in the year of our Lord one thousand eight hundred and fifty-nine, and of the independence of the United States the eighty——.

CHAS. W. NEWTON,
United States Commissioner, duly appointed by the Circuit Court of the United States for the Southern District of New York, in the Second Circuit.

138 UNITED STATES OF AMERICA,
Southern District of New York,
City, County, and State of New York, ss:

Be it remembered that on this 29th day of July, in the year of our Lord one thousand eight hundred and fifty-nine, I, Charles W. Newton, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and

by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, did call and cause to be and personally appear before me, at my office at No. 74 Wall street, in the city
139 of New York, in the said southern district of New York, in the State aforesaid, James B. Nicholson, to testify and the truth to say on the part and behalf of the claimant in a certain suit or matter of controversy now depending and undetermined in the district court of the United States for the southern district of Alabama, wherein William A. Freeborn & others are libellants, & the ship Protector, her tackle, &c., are respondents; and the said James B. Nicholson being of lawful age, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, I did carefully examine the said James B. Nicholson, and he did thereupon depose, testify, and say as follows, viz:

(Mr. Southmay, counsel for claimants, claim that this deposition is to be regarded and taken as a recalling of the witness for the purpose of further cross-examination, but proceeds to take the deposition, leaving it for the court to decide whether the deposition is to be regarded, or as calling of the witness anew for the claimants.

140 Counsel for libellants, Mr. Donohue, here states that he attends this examination only as an original examination on the part of the claimant.)

Q. Do you know whether or not the custom in this port or in this State, in respect of liens on vessels, either foreign or domestic, for repairs or supplies furnished to such vessel, agrees in the, or varies from the, positive rules of law?

A. I know nothing about the law; I only know what the custom is.

Question repeated.

(Obj. to by the libellants' counsel, on the ground that the witness has already answered the question.)

A. So far as the custom is concerned, I am willing to give you my knowledge & experience so far as the custom is concerned. I am unable to say as to the law, as I have not looked into it & don't know what it is.

Q. Do you or not know whether there is any law on the subject?

A. I have already answered the question.

141 Q. Have you answered it in the affirmative or negative?

(Obj. by claimant.)

A. I can't answer that question.

Q. Please say, distinctly, whether you know whether or not this matter is regulated by rules of law.

A. I presume it is; I presume that custom makes law.

(Latter part of the answer objected to by claimants' counsel.)

Q. Do you know whether not it is regulated by statute law?

A. I don't know.

Q. Are you then entirely ignorant of any statutory provisions on this subject?

A. I am.

Q. Do you know under what circumstances either the statute laws or the decisions of the admiralty courts in this State give liens on vessels

for repairs or supplies, how long such liens continue, or how they are to be enforced?

(Libellants' counsel objects, first, that it is not the proper mode of proving the statue or the decision of the court; &, secondly, that the witness has already stated that he did not know.)

142 A. I have already stated that I don't know how the law stands on the subject; there have been so many decisions on the subject that I have not kept the track of it; it is impossible for me to know what the law is when the judges differ so on the subject.

Q. Do you know whether or not there is any custom in respect to liens on vessels which is not founded upon the law—by which I mean the statutes & decisions?

(Obj. by claimant.)

A. I have already answered that I have no knowledge of the law; it is not my business.

Q. Do you know how this custom of which you speak of arose?

(Obj. by claimants' counsel, on the ground that he has not spoke of any custom in this deposition, & no custom is stated in the question.)

A. I do not.

Q. Do you know on what it is founded?

(Obj. by claimants' counsel.)

A. Please explain the question.

Q. When called as a witness on behalf of the libellants in this cause, you testified to the existence of a custom which gave to the party

143 supplying the repairs or supplies to a vessel a lien on the vessel for the price or value of such repairs or supplies; what I wish to know is whether you know whether or not this custom which you speak of is anything more than that there are laws which give such liens, & that when the bill for such repairs or supplies is unpaid you are accustomed to go to a lawyer & have him take the necessary proceedings to enforce the lien which the law gives for such repairs or supplies?

(Claimants' counsel here objects to that part of the question which calls for the witness' knowledge of a opinion on the law, as the witness has already answered the question.)

A. I have stated already, that, so far as the law is concerned, I am unable to give an opinion; we resort to the law in the last extremity, when we cannot enforce our claims from the owners or ships.

Q. According to the custom, as you understand it, is this lien on the vessel the same in all respects, whether the vessel be a foreign or a domestic vessel?

A. The same on both.

144 Q. How long does the lien last, according to the custom you have testified to?

A. I do not know.

Q. According to the custom, as you understand it, does the lien exist in every case for repairs or supplies furnished to a vessel?

A. I think it does, except in cases where there is a special agreement.

Q. Please state upon what facts within your knowledge you fo[r]unded your statement that there is a custom giving a lien on vessels for repairs or supplies.

A. I don't recollect what I testified to; I testified here as to the custom of charging vessels & owners for bills of supplies & repairs.

Q. What custom do you know of in this respect—I mean the holding a vessel liable for repairs or supplies? Do you know anything more about a custom than that when repairs or supplies are furnished, that the person who furnished them charges the amount on his books to the

vessel & owners, & that if does not get his bill paid voluntarily, he goes to a lawyer & gets his claim collected by law if he can?

145 A. I know that the custom in the city of [of] New York for the last thirteen years has been to charge all goods, supplies, or repairs done or furnished to vessel to the vessel & owners, with the knowledge of the owners, it being perfectly understood that the vessel & owners are liable for it; frequently the owners are not worth a dollar.

Q. Do you mean that in every case it has been customary, or that it has been usual, when repairs or supplies have been furnished, for the person furnishing them to mention them to the owner or his agent that he intended to charge the am't on his books to the vessel & owners, & expected to hold the vessel liable for it?

A. I mean to say that the custom is well known & universal; that with those having to do with vessels the subject is hardly ever talked of, it being well understood that if the person can't pay the vessel is holden.

Q. May it not be, for all you know to the contrary, that this custom, as you call it, which you say is so generally understood, grows merely out of this: that there is a law in this State which gives a lien on

146 a vessel for repairs or supplies, providing the proper means are taken to preserve & enforce it?

(Objected to by claimants' counsel on the ground, first, that the question is argumentative, & calls for known knowledge of the witness; &, second, that he has already answered that he knows nothing about the law.)

A. I don't know that it arises from that.

Q. Do you know that it don't arise from that?

(Same obj'n by claimants' counsel last noted.)

A. I have already answered that.

Q. Do you mean that you have already answered that you do know that it don't arise from that?

(Same obj'n last noted.)

A. I don't understand the question.

Q. Your last answer but one was that you had already answered the question I put you. I cannot see where you have answered it, & I therefore repeat the last question but one & ask you to give an answer to it.

(Claimants' counsel objects to question on the same grounds noted to the question repeated.)

147 A. I don't know.

Q. Do you know what gives you the right, when you furnish repairs or supplies to a vessel, & nothing is said as to the credit on which you furnish them, to hold the vessel by taking legal proceedings against the vessel if the bill is not paid?

A. This universal custom which has existed here since I have been connected with vessels.

Q. In how many instances have you known the question to come up, whether you or other persons furnished repairs or supplies had the right to hold the vessel for the am't, & in what shape has the question come up, & how has it been settled?

(Claimants' counsel here objects to the question on the ground it does not appear that it has ever come up or been settled, or that the witness has testified to any such fact.)

A. I have frequently heard of vessels being attached and parties getting their money.

Q. Do you know anything of the particular circumstances of those cases?

(Same obj'n.)

A. My memory don't serve me.

148 Q. You have stated that the right to hold a vessel for repairs or supplies is given by the universal custom which has existed here since you have been connected with vessels; now please state fully what acts have been done during all that time by yourself, or any one else within your knowledge, under & in pursuance of this universal custom which you speak of.

A. We have collected from the ships & vessels bills for supplies and repairs; I think we have had but two suits, one has been settled & the other we have a judgment against the ship & owners.

Q. Are these the only acts you know of as done in pursuance of this custom?

A. Those are the only two so far as we are concerned; I have heard of innumerable cases where vessels have been seized & the money collected.

Q. Has not this always been done by legal proceedings?

A. I presume so.

Q. Do you know that in any of the cases, either of your own or other people, which you refer to as establishing this custom, there has been any enforcement of any lien not founded upon posative law?

149 (Claimants' counsel objects to the question on the ground that the witness has already stated that he does not know anything about the law.)

A. As to the law I have already answered; but they were founded upon justice.

Q. Please state whether, in your own cases, or in the cases of any one else with which you are acquainted, you know on what ground the lawyer in whose hands the claims were put succeeded in holding the vessels. If so, how do you know it?

A. On the ground that it was the custom of the port of New York, and that the law which should give every man his due.

Q. Now please state how you know that these lawyers, or any one of them, succeeded in holding those vessels, or any one of them, liable for any such repairs or supplies on the ground of a lien by custom as distinguished from a lien by law, & give the name of any case in which any such doctrine has been established within the State of New York.

A. I don't know of any case.

Q. Have you intended to say on your examination, either

150 when first called by the libellant or to-day, that you know of the existence or enforcement of any lien by custom as distinguished from a lien by law?

(Claimant's counsel again objects to the question on the ground that the witness has stated that he knows nothing about the law or on what the custom was founded.)

A. No; I mean to say that in those which came to my own knowledge that a resort was made to the law aid in collecting these claims.

Q. Can you state any case which ever occurred within your knowledge where a person furnishing repairs or supplies had lost the lien which the law gave him, by reason of waiting too long to enforce it, or from any other cause, and yet succeeded in holding the vessel liable upon the ground of a lien by custom when the lien by law had been lost?

(Claimant's counsel objects to the question on the ground that the witness has stated that he does not know anything about any

151 lien by law as distinguished from a lien by custom.)

A. I don't know of any.

(Signed) JAS. B. NICHOLSON.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, Charles W. Newton, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the
152 judicial courts of the United States," passed September 24th, 1789, do hereby certify that the reason for taking the foregoing deposition is, and the fact is, the witness' testimony is material and necessary in the cause in the caption of the said deposition named, and that he resides more than one hundred miles from the place designated for the trial of this cause.

I further certify that a notification of the time and place of taking the said deposition, signed by me, was made out and served on the counsel for the libellants, residing in New York City, to be present at the taking of the said deposition, and to put interrogatories, if he or they might think fit.

I further certify that on the 29th day of July, in the year of our Lord one thousand eight hundred and fifty-nine, I was attended by Charles Donohue, esq., counsel for libellant, & Mr. Southmayd, counsel for claimants, and by the witness, who was of sound mind and lawful age, and the witness was by me first carefully examined and cautioned, and sworn to testify the truth, the whole truth, and nothing but the
153 truth, and the deposition was by me reduced in writing in the presence of the witness and counsel, and, after carefully reading the same to the witness, he subscribed the same in my presence. I have retained the said deposition in my possession for the purpose of transmitting, by mail, the same, with my own hand, to the court for which the same was taken.

And I do further certify that I am not of council nor attorney for either of the parties in the said deposition and caption named, nor in any way interested in the event of the cause named in said caption.

In testimony whereof, I have hereunto set my hand and seal this 29th day of July, in the year of our Lord one thousand eight hundred and fifty-nine, and of the independence of the United States the eighty-third.

(Signed) CHAS. W. NEWTON,
United States Commissioner, duly appointed by the Circuit Court of the United States for the Southern District of New York, in the Second Circuit.

(Endorsed:) Deposition of the part of the claimant taken July 29th, 1859.

154 UNITED STATES OF AMERICA,
Southern District of New York,
City, County, and State of New York, ss:

Be it remembered that on this 3rd day of July, in the year of our Lord one thousand eight hundred and fifty ——, I, Charles W. Newton, a commissioner duly appointed by the circuit court of the United

States for the southern district New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, did call and cause to be and personally appear before me, at my office at No. 74 Wall street, in the city of New York, in the said southern district of New York,
155 in the State aforesaid, Henry B. Secor, to testify and the truth to say on the part and behalf of the claimant in a certain suit or matter of controversy now depending and undetermined in the district court of the United States for the district of Alabama, wherein William A. Freeborn et als. are libellants, and the ship Protector claimants.

And the said Henry B. Secor, being of lawful years, and having been by me first cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, I did carefully examine the said Henry B. Secor, and he did thereupon depose, testify, and say as follows, viz:

(Mr. Southmay & counsel for claimants claim that this deposition is to be regarded and taken as a recalling of the witness, for the purpose of farther cross-examination, but proceeds to take the deposition, leaving it for the court to decide whether the deposition is to be so regarded, or as a recalling of the witness for the claimant.

Counsel for libellant, Mr. Donahue, here states that he attends
156 this examination only as an original examination on the part of claimant.)

Q. You have testified upon your direct examination on behalf of the libellants in this cause, that there is a custom in this port or State by which vessels are held liable for repairs or supplies furnished to them. Have you any knowledge of how far the law gives a lien on vessels for repairs or supplies?

(Objected to by libellants' counsel, on the ground that the witness is not competent to testify as to what the law is.)

A. I don't know about the law, only what the custom is.

Q. On what facts within your own knowledge is your evidence of the existence of such a custom founded?

A. I don't know to answer that any more than it is the general custom to look to or hold the vessel for the pay.

Q. How to look to the vessel or hold her? Do you mean to take legal proceedings against the vessel if the bill is not paid?

(Obj'n.)

157 A. If a vessel owed me a bill I would look to her, whenever & wherever I could find her, to get my pay.

Q. Do you know what it is that enables you, or other persons who have furnished repairs or supplies to a vessel, to hold the vessel for the am't? Is it not because there is a law which gives a lien on the vessel, provided the proper means are taken to enforce it in due season?

(Objected to, 1st, on the ground of its being leading. 2nd, because it calls for the witnesses' opinion of the law, which he has already stated he knows nothing about.)

A. It is generally understood that a vessel is good for her bills.

Q. Is that all you know about the existence of any custom on the

subject, viz: that it is generally understood that a vessel is good for her bills?

A. I believe that is all that I know about it; because it is generally understood that the vessel is good for whatever she has.

Q. I again ask you if you know what it is that makes a vessel
158 liable—whether it is a rule of law or not?

(Objected to by claimants' counsel on the same grounds last noted.)

A. I know that it is generally understood, from usual course & general custom, that there is a claim on the ship, but whether it arises from a law or not I don't know.

Q. Do you know any diffirence in this respect between foreign & domestic vessels?

A. No, I do not.

Q. Have you any knowledge that there is any such thing known here as a lien on a vessel by custom, in those cases in which the lien by law has been lost by delay or otherwise? If so, name the particular case in which you have known any such lien by custom to be enforced or asserted.

(Obj'n by claimants' counsel, on the ground that the witness has already stated that he knows nothing about any lien by law, & only speaks of custom, & therefore cannot on this examination be asked, by the party calling him, a question to indirectly or hypothetically negative his question.)

159 A. I don't know anything about the lien by law; I know when we do anything for a vessel we consider her holden.

Q. Is that all you know about any custom on this subject.

A. All I know is that I and others when we do anything on a vessel we consider her holden; never consider a claim given up unless she is burned, sunk, or destroyed.

Q. Is it then your understanding that there is no limitation of time for enforcing a lien for supplies or repairs furnished a vessel, whether foreign or domestic?

A. I don't know any limitation without it is when you get your money.

Q. Please state where you obtained your knowledge on this subject.

A. I obtained it from general custom.

Q. Do you know anything more about it than that you think this is so, & you believe other people think so to?

A. I know that others do.

Q. Is that all you know about it?

A. That is all that I think of now that I know about it.

Q. Can you state any acts which have been done by yourself or
160 others which establish that you and they are right in this opinion which you entertained?

(Obj'n.)

A. I don't know that I can go into any of the acts that establish the custom; I know it is the custom, but where it arose from I don't know.

Q. Do you mean that it is the custom to think so, or that it is the custom to do anything in pursuance of this right, or supposed right? If so, what is customary to do about it?

A. It is customary to think so certain, or else a man would not touch a job, & the custom to do anything must, I think, have been established some day or other, or they would not have been accustomed to think so.

Q. Have you ever had any personal experience in holding a vessel liable for her bills where the parties would not pay them voluntarily?

(Obj'n.)

A. What do you mean—by going to law?

Q. Yes, or by any other means which would bring to the test the soundness of this opinion of yours.

(Obj'n.)

A. I have not been to law about it; the other means has been
161 by following them up until I got my pay out of them.

Q. Dunning them, you mean, do you?

A. Yes, sir.

(Signed) HENRY R. SECOR.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, Charles W. Newton, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish
162 the judicial courts of the United States," passed September 24th, 1789, do hereby certify that the reason for taking the foregoing deposition is, and the fact is, the witness' testimony is material and necessary in the cause in the caption of the said deposition named, and that he resides more than one hundred miles from the place designated for the trial of this cause.

I further certify that a notification of the time and place of taking the said deposition, signed by me, was made out and served on the counsel for the claimants in New York, to be present at the taking of the said deposition, and to put interrogatories, if he or they might think fit.

I further certify that on the 30th day of July, in the year of our Lord one thousand eight hundred and fifty-nine, I was attended by the counsel for respective parties, and by the witness, who was of sound mind and lawful age; and the witness was by me first carefully examined and cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, and the deposition was by me reduced to
163 writing in the presence of the witness and counsel, and, after carefully reading the same to the witness, he subscribed the same in my presence. I have retained the said deposition in my possession for the purpose of transmitting, by mail, the same, with my own hand, to the court for which the same was taken.

And I do further certify that I am not of council nor attorney for either of the parties in the said deposition and caption named, nor in any way interested in the event of the cause named in said caption.

In testimony whereof, I have hereunto set my hand and seal this 30th day of July, in the year of our Lord one thousand eight hundred and fifty-nine, and of the independence of the United States the eighty-third.

CHARLES W. NEWTON, UNITED STATES COMMISSIONER, NEW YORK.

CHAS. W. NEWTON,
United States Commissioner, duly appointed by the Circuit Court of the United States for the Southern District of New York, in the Second Circuit.

164 UNITED STATES OF AMERICA,
Southern District of New York,
City, County, and State of New York, ss:

Be it remembered that on this 3d day of July, in the year of our Lord one thousand eight hundred and fifty-nine, I, Charles W. Newton, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, did call, and cause to be and personally appear before me, at my office, at No. 74 Wall street, in the city of New York, in the said southern district of New York,
165 in the State aforesaid, Nicholas Lawson, to testify and the truth to say, on the part and behalf of the claimant, in a certain suit or matter of controversy, now pending and undetermined, in the district court of the United States for the southern district of Alabama, wherein the ship Protector is claimant, and William A. Freeborn libellant. And the said Nicholas Lawson, being about the age of thirty-seven years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, I did carefully examine the said Nicholas Lawson, and he did thereupon depose, testify, and say as follows, viz:

(Mr. Southmayd, counsel for claimants, claim that this deposition is to be regarded and taken as a recalling of the witness for the purpose of farther cross-examination, but proceeds to take the deposition, leaving it for the court to decide whether the deposition is to be so regarded or as a calling of the witness anew for the claimant.

166 Counsel for libellant, Mr. Donahue, here states that he attends this examination only as an original examination on the part of the claimant.)

Q. You have testified, upon your direct examination on behalf of the libellants in this case, that there is a custom in this port or State by which vessels are held liable for repairs or supplies furnished to them. Have you any knowledge of how far the law gives a lien on vessels for repairs or supplies?

(Objected to by libellants' counsel, on the ground that the witness is not competent to testify as to what the law is.)

A. I don't know about the law, only what the custom is.

Q. On what facts within your own knowledge is your evidence of the existence of such a custom founded?

A. I don't know how to answer that, any more than it is the general custom to look to or hold the vessel for the pay.

167 Q. How to look to the vessel or hold her? Do you mean to take legal proceedings against the vessel if the bill is not paid?

(Obj'n.)

A. If a vessel owed me a bill I would look to her, whenever & wherever I could find her, to get my pay.

Q. Do you know it is that enables you or other persons who have furnished supplies or repairs to a vessel to hold the vessel for the am't? Is it not because there is a law which gives a lien on the vessel, provided the proper measures are taken to enforce it in due season?

(Obj'n—first, on the ground of its being leading; 2d, because it calls

for the witnesses' opinion of the law, which he has already stated he knows nothing about.)

A. It is generally understood that a vessel is good for her bills.

Q. Is that all you know about the existence of any custom, viz: that it is generally understood that a vessel is good for her bills?

A. I believe that is all I know about it; because it is generally understood that the vessel is good for whatever she has.

168 Q. I again ask you if you know what it is that makes a vessel liable—whether it is a rule of law or not?

(Objected to by claimants' counsel on the same grounds last noted.)

A. I know that it is generally understood from usual course & general custom, that there is a claim on the ship, but whether it arises from a law or not I don't know.

Q. Do you know any diffirence in this respect between foreign & domestic vessels?

A. No; I do not.

Q. Have you any knowledge that there is any such thing known here as a lien on a vessel by custom, in those cases in which the lien by law has been lost by delay or otherwise? If so, name the particular case in which you have known any such lien by custom to be enforced or asserted.

(Obj'n by claimants' counsel, on the ground that witness has already stated that he knows nothing about any lien by law, & only speaks of custom, & therefore cannot on this examination be asked, by the
169 party calling him, a question too indirectly or hypothetically negative his question.)

A. I dont't know anything about the lien by law. I know when we do anything for a vessel we consider her holden.

Q. Is that all you know about any custom on this subject?

A. All I know is, that I and others, when we do anything on a vessel we consider her holden; never consider a claim given up unless she is burnt, or sunk, or destroyed.

Q. Is it then your understanding that there is no limitation of time for enforcing a lien for supplies or repairs furnished a vessel, whether foreign or domestic?

A. I don't know any limitation, without it is when you get your money.

Q. Please state where you obtained your knowledge on this subject.

A. I obtained it from general custom.

Q. Do you know anything more about it than that you think this is so, & you believe other people think so to?

A. I know that others do.

170 Q. Is that all you know about it?

A. That is all that I think of now that I know about it.

Q. Can you state any acts which have been done by yourself or others, which establish that you and they are right in this opinion which you say is entertained?

(Obj'n.)

A. I don't know that I can go into any of the acts that establish the custom. I know it is the custom, but where it arose from I don't know.

Q. Do you mean that it is the custom to think so, or that it is the custom to do anything in pursuance of this right, or supposed right? If so, what is customary to do about it?

A. It is customary to think so certain, or else a man would not touch a job, & the custom to do anything must, I think, have been established some day or other, or they would not have been accustomed to think so.

Q. Have you ever had any personal experience in holding a vessel liable for her bills where the parties would not pay them voluntarily?
(Obj'n.)
A. What do you mean—by going to law?
171 Q. Yes; or by any other means which would bring to the test the soundness of this opinion of yours.
(Obj'n.)
A. I have not been to law about it; the other means has been by following them up until I got my pay out of them.
Q. Dunning them, you mean, do you?
A. Yes, sir.
(Signed) NICHOLAS LAWSON.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, Charles W. Newton, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled
172 "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed September 24th, 1789, do hereby certify that the reason for taking the foregoing deposition is, and the fact is, the witness' testimony is material and necessary in the cause in the caption of the said deposition named, and that he resides more than one hundred mile from the place designated for the trial of this cause.

I further certify that a notification of the time and place of taking the said deposition, signed by me, was made out and served on the counsel for claimants, residing in New York, to be present at the taking of the said deposition, and to put interrogatories, if he or they might think fit.

I further certify that on the 30th day of July, in the year of
173 our Lord one thousand eight hundred and fifty-nine, I was attended by Mr. Donahue, counsel for libellants, & Mr. Southmayd, for claimant, and by the witness, who was of sound mind and lawful age, and the witness was by me first carefully examined and cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, and the deposition was by me reduced to writing in the presence of the witness and counsel, and, after carefully reading the same to the witness, he subscribed the same in my presence. I have retained the said deposition in my possession for the purpose of transmitting, by mail, the same, with my own hand, to the court for which the same was taken.

And I do further certify that I am not of council nor attorney for either of the parties in the said deposition and caption named, nor in any way interested in the event of the cause named in said caption.
174 In witness whereof, I have hereunto set my hand and seal this 30th day of July, in the year of our Lord one thousand eight hundred and fifty-nine, and of the independence of the United States the eighty-third.

(Signed) CHARLES W. NEWTON,
United States Commissioner, duly appointed by the Circuit Court of the United States for the Southern District of New York, in the Second Circuit.

UNITED STATES OF AMERICA,
Southern District of New York,
City, County, and State of New York, ss:

Be it remembered that on this 16 day of May, in the year of our Lord one thousand eight hundred and fifty-nine, I, , a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the
175 courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, did call and cause to be and personally appear before me, at my office, at No. 74 Wall street, in the city of New York, in the said southern district of New York, in the State aforesaid, Hiram Benner, to testify and the truth to say, on the part and behalf of the claimant in a certain suit or matter of controversy, now depending and undetermined, in the district court of the United States for the southern district of Alabama, wherein the ship Protector is claimant, and William A. Freeborn libellant.

And the said Hiram Benner, being about the age of forty-two years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of con-
176 troversy aforesaid, I did carefully examine the said Hiram Benner, and he did thereupon depose, testify, and say as follows, viz:

In Sept., 1856, I was engaged in the commission business in New York; I knew Gen'l Joseph Berry at that time, & do now.

Q. If in Sept., 1856, Gen'l Joseph Berry had desired to buy in this market, upon his personal credit, to the am't of $3,000, or thereabouts, do you know whether or not he could have procured it upon such credit?

(Obj'n by libellants' counsel.)

A. I don't know that. If Gen'l Berry had applied to me at that time for any merchandise I had for sale, I should have willingly given him credit for that am't. I don't know about his credit in market; all I know is the opinion we had of him; we wanted to sell him lumber at that time; we made very careful enquiries about his credit at that time, for we wanted to sell him; after such enquiries we were willing to sell him on credit.

Q. In September, 1856, in what articles were you dealing?

A. The only articles we were talking with him about were yel-
177 low-pine timber, chains, & anchors.

Adjourned to May 18th, at 3 o'clock.

MAY 21*st*.—Parties appear and cross-ex. adjourned to the 31st of May, 3 o'c.

MAY 31*st*.—Parties appear & cross-ex'n of witness adjourned to June 2d.

JUNE 2*d*.—Ex'n adj. to June 7th.

JUNE 7*th*.—Adj. to June 9th.

JUNE 9*th*.—Adj. to June 15th.

JUNE 15*th*.—Adj. to 16th.

16TH.—Adj. to June 18th, 10 o'c.

JUNE 18*th*.—Parties appear, & Mr. Donahue, counsel for libellants, proceeds to cross-examine Hiram Benner, who testifies as follows:

I did not sell Gen'l Berry any goods. I have been in business in the city of New York over four years.

Q. During that time has there been any custom in the city of New York in regard to the credit on which supplies are furnished to vessels?

(Obj'n by respondent's counsel as not a cross-examination on the direct examination.)

A. My opinion is that the supplies have been furnished the ship. If I had sold I should have sold on the credit of the ship; that is my view of the matter.

Re-direct resumed:

178 Q. Is it not your understanding that all this is matter regulated by law?

A. I don't know that I can answer that properly. It has always been my understanding that the ship was responsible. I suppose there is a law regulating it.

Q. Can you undertake to say there is any custom outside of, or varying from, the law?

A. I would not say.

(Signed) HIRAM BENNER.

OWEN TYLER, a witness produced on the part of the claimant, this 16th day of May, 1859, gives answer & says:

I know Gen'l Joseph Berry. I am his son-in-law. I was in business in Sept., 1856, at 154 South st. in this city. I know that the ship Protector had a suit of copper at that time from Freeborn & Co.

Q. Do you know of any bill being rendered for it? If so, when
179 was it rendered?

(Obj'n by libellants' counsel.)

A. Yes, sir; there was one rendered for it at my office.

Q. Did you afterwards see W. A. Freeborn & Co. & make any proposal to them in regard to the settlement of the am't due them for the copper they had furnished the Protector? If so, what took place?

(Obj. by libellant' counsel.)

A. They called on me in regard to the settlement of that bill & I offered them my note, but they requested Gen'l Berry's. The note was to run six months from the date of the bill.

Q. Why did you offer them your note?

(Obj. to by libellants' counsel.)

A. That I might receive from Gen'l Berry his note & use it in my business.

(Signed) OWEN TYLER.

Adjourned to May 18th, at 3 o'c.

OCT. 26th, 1859.—Owen Tyler, the above witness, being recalled pursuant to a notice of examination duly given to the counsel for libellant, upon being duly sworn, gave answer as follows:

Counsel for libellant appearing, Mr. Southmayd, of counsel for claimant, proceeds to examine said witness, as follows:

180 Q. Do you know what was the condition of the ship Protector in respect to master & crew at the time the bill of copper in question in this suit was ordered from the libellants & at the time when the copper was furnished & put upon the ship? If so, state.

A. She was without a master or crew at that time. The master had been discharged three weeks before that, to the best of my recollection.

Q. Who was attending to the repairs of the vessel when this copper was ordered & supplied?

A. The owner, Gen'l Berry, who was here at the time.

Q. Where did he make his business stopping-place?

A. At my office more than any other place, I think.

Q. When the vessel left port after this recoppering, did she again have this same master who had been discharged as you have mentioned?

A. She did not.

Q. Did you know of the ordering of this copper at the time it was ordered?

A. I ordered it for Gen'l Berry. He was with me.

181 Q. You have stated you think the master had been discharged about three weeks before this time. Do you know that he had been discharged some time before this?

A. I do.

(Signed) OWEN TYLER.

The above examination, under date of Oct. 26th, was taken after the cross-examination annexed of the same witness had taken place. The libellants' counsel appearing & not desiring any further cross-examination of the witness, the same is duly closed.

Cross-examination:

I am son in-law of Gen'l Berry. I think he owned the whole or a portion of six or seven vessels in Sept., 1856, viz: The Protector, Windsor Forest, William (ship), Ellen E. Booker, ship Normandy, ship Sea Dog, ship Harriet, & the barque William & Jane. He owned interests in other vessels—the brig George, & others I don't recollect the names of.

182 Q. Did you know in Sept., 1856, Gen'l Berry had obtained a large advance on & given a conveyance of the ship Protector to the Phillips?

A. I knew there was conveyance made of the Protector to Mr. Phillips about the time it was made, but the particular time I don't recollect.

Q. Did you know of his obtaining advances on any, & which, of his other vessels, or making conveyances of them at or before that time to secure advances?

A. I did not & do not. I am quite positive he had no advances on any other ship except the Protector.

Q. Do you mean to say there were no mortgages on any other vessels owned by Gen'l Berry at that time or previous?

A. In all my business with him, I always understood there were no other advances or liens on any other ship than the Protector.

Q. When did Gen'l Bragg make an assignment?

A. He failed in Febr'y 1857, & made an assignment about six months ago. I am not sure that I was present when the bill was brought & do not recollect positively who brought it.

Q. Did you not go to Freeborn & Co. office for this bill?

183 A. It appears to me I did. I can't say whether I did or not.

Q. You say they called at your office. Who called?

A. William A. Freeborn. I can't say who he came to see; he came in regard to the bill, I presume; he did not expect me to pay it; I don't know whether he did or not.

Re-direct resumed:

Gen'l Berry was in habit of making my office his stopping-place when he was in town.

Re-cross resumed:

Gen'l Berry' residence was in Georgetown, Main, at that time, & has been so ever since.

(Signed) OWEN TYLER.

HENRY E. NESMITH, a witness produced and sworn on the part of claimant, this 18th day of June, 1859, gives answer and says:

184 I am a merchant doing business in this city. I am engaged in the shipping business; have been engaged in that business in the city some fifteen years. I know Gen'l Joseph Berry; I knew him in Sept., 1856; I had known personally some three years prior to 1856, & by name much longer; we have had business transactions with him.

Q. What was his pecuniary credit & standing in this city in September, 1856?

A. My impression of his credit was good.

Q. Would you have given him credit at that time on his own responsibility?

(Obj. by libellants' counsel.)

A. I think we should.

Q. If in September, 1856, Gen'l Berry had required to buy in this market three or four thousand dollars' worth of merchandise, was his credit good enough to have enabled him to have purchased the same with his note at six months?

(Obj. by claim'ts' counsel.)

A. I should think it was.

Cross-examined:

Q. Do you know what ship Gen'l Berry owned in Sept., 1856, or if he owned the ship Protector?

185 A. I don't recollect the names of the ships he owned. I think he represented the Protector; but whether he owned her or not I can't say.

Q. Do you know that he got an advance on the Protector from Mr. Phillips at that time & made a conveyance of the vessel to him?

A. I did not.

Q. Had your firm any conveyance of or any securities on any of his vessels at that time?

A. Not that my memory serves me at this time.

Q. Did they at any time?

A. My impression that we did not.

Q. Did your firm make any advance to him, or for him, on any of his ships?

A. I think we have.

Q. How were you secured for that?

A. I suppose we were secured by the vessels & owners for all advances made to the vessel, or for her bills for advances to, him individually; we looked to him & his property.

Q. Did you have any other transactions with him except advancing to, or disbursing his vessels?

186 A. We might have in one instance; of that I am not positive.

(Signed) HENRY E. NESMITH.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, Charles W. Newton, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, do hereby certify that the reason for taking the foregoing deposition
187 is, and the fact is, the witnesses' testimony is material and necessary in the cause in the caption of the said deposition named, and that they reside more than one hundred miles from the place designated for the trial of this cause.

I further certify that a notification of the time and place of taking the said depositions, signed by me, was made out and served on the counsel for the libellants, residing in New York, to be present at the taking of the said deposition, and to put interrogatories, if he or they might think fit.

I further certify that on the several days of the months within named, in the year of our Lord one thousand eight hundred and fifty-nine, I was attended by counsel for the respective parties, and by the witnesses, who were of sound mind and lawful age, and the witnesses were by me first carefully examined and cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, and the depositions were by me reduced to writing in the presence of the witnesses and counsel, and, after carefully reading the same to the wit-
188 nesses, they each subscribed the same in my presence. I have retained the said depositions in my possession for the purpose of transmitting the same, with my own hand, to the court for which the same were taken.

And I do further certify that I am not of counsel nor attorney for either of the parties in the said deposition and caption named, nor in any way interested in the event of the cause named in said caption.

In testimony whereof, I hereunto set my hand and seal this 27th day of October, in the year of our Lord one thousand eight hundred and fifty-nine, and of the independence of the United States the eighty-third.

[SEAL.] CHAS. W. NEWTON,
United States Commissioner, duly appointed by the Circuit Court of the United States for the Southern District of New York, in the Second Circuit.

189 UNITED STATES OF AMERICA,
District Court of the United States for the Southern District of Alabama:

WM. A. FREEBORN & CO.
vs.
SHIP PROTECTOR.

To Joseph C. Lawrence and Gouverneur M. Ogden, esq'r's, greeting:

Know ye, that we, in confidence of your prudence and fidelity, have appointed you, and, by these presents, do give you, full power and

authority to examine Samuel T. Moore, George W. Kendall, & Roland W. Griffiths, as witnesses in a cause pending in our said court, wherein Wm. A. Freeborn & Co. are libellants, and the ship Protector is respondent.

And therefore we command you, that, at such time as you may appoint, you do cause the said Samuel T. Moore, George W. Kendall, & Roland W. Griffiths, to come before you, and then and there examine them on oath as witnesses in the cause aforesaid. And that you do take such examination, and reduce the same into writing, and return the same annexed to this writ, closed up under your seals, into our said district court, with all convenient speed.

190 Witness the Hon. Wm. G. Jones, judge of the district court of the United States for said district, and the seal of said court, the fourth Monday of April, in the year of our Lord one thousand eight hundred and fifty-nine.

Issued the 12th day of November, 1859.

[SEAL.] Attest: R. B. OWEN,
Clk D. C. Sou. Dis. Ala.

191 "*A.*"

NEW YORK, *September 18th*, 1858.

The ship Protector & owners to Wm. A. Freeborn & Co.

DR.

Sept. 18.	To 2,050 sheets yellow metal, viz:			
	115,	18,	616	
	115,	"	617	
	115,	"	616	
	115,	"	617	
	115,	"	618	
	100,	20,	589	
	100,	"	587	
	100,	"	588	
	100,	"	588	
	100,	"	586	
	50,	"	303	
	100,	22,	648	
	100,	"	647	
	100,	"	646	
	100,	"	646	
	100,	"	647	
	85,	24,	606	
	85,	"	604	
	85,	"	604	
	85,	"	603	
	85,	"	605	
	2,050 sheets, 12,581 lbs., *a* 23c			$2,893 63
	To cartage on 20 cases do., *a* ⅛			3 75
	" 5 bbbls. tar, *a* 24			15 00
	" 2 lbs. composition spikes, *a* 24c			48
	" composition nails, 1,611			
	Returned	405		
			1,206 lbs., 27c	265 32
	" 1,100 lbls. sheathing paper, *a* 4½c			49 50

	" 13 papers felt tacks, *a* 1¼	1 63
	" 44 lbs. stem yellow metal, *a* 26c	11 44
	" 8 lbs. composition stem nails, *a* 37½	3 00
24.	" 13 lbs. stem yellow metal, 26c	3 38
	" 4 lbs. compo. stem nails, 37½	1 50
		$3,248 63

Cr.

By 30 lbs. scrap yellow metal, *a* 16c	4 80
	$3,243 83

192 District court of the United States for the southern district of Alabama.

WILLIAM A. FREEBORN & Co.
vs.
THE SHIP PROTECTOR.

Interrogatories to be propounded to Samuel T. Moore, Geo. W. Kendall, and Rowland W. Griffiths, witnesses, residing in the city of New York, and State of New York, to be produced, sworn, and examined, in a certain cause of admiralty and maratime jurisdiction, now pending in the district court of the United States for the southern district of Alabama, wherein William A. Freeborn & Co. are libellants, and Mendal Crocker, on behalf of James C. Bell, claimant, on the part and behalf of libellants.

First interrogatory. What is your name, age, residence, and place of business, and your business or profession?

Second interrogatory. Did you know a ship or vessel called or named the "Protector," built in the State of Maine, which vessel was lying in the port of New York previous to and during the month of September, 1856? If so, under what circumstances did you acquire your
193 knowledge of said vessel? By whom was she owned from the time you first knew her, up to the 25th day of September, 1856? Where did her owners reside during that time?

Third interrogatory. State the name and part painted on the stern of said vessel at the time referred to.

Fourth interrogatory. Do you know William A. Freeborn, James F. Freeborn, and Henry P. Gardiner, composing the mercantile firm of William A. Freeborn & Co.? If so, in what city & State do they reside, and where do they carry on their mercantile business? How long have they been engaged in their business in said city and State, and what is its nature and kind?

Fifth interrogatory. Look at the account hereto annexed, marked A. Do you know anything of the sale and delivery of the articles therein mentioned? If so, state fully by whom the said articles were sold and delivered; when, where, and by whom purchased; for what purpose; and how used and disposed of. What was the value of the articles so purchased? Are the prices in said amount charged, at the dates when said articles was sold and delivered, fair, reason-
194 able, and just prices for the same? Were the articles purchased necessary to make the said ship seaworthy? Was her condition seaworthy or otherwise before these articles were furnished?

Sixth interrogatory. By whose directions and order were said articles furnished and delivered? Who was then in possession of said ship

Protector, and exercising acts of ownership over her? Upon whose or what credit or security were said articles furnished?

Seventh interrogatory. If you shall state that said articles were furnished to, and delivered for repairs on and for, the ship Protector, of Bath, in the State of Maine, then lying in the port of New York, state further when did said ship leave the port and harbor of New York, and for what port or ports did she sail. Has said ship since returned to the port of New York, or of the State of New York, or of the United States, to your knowledge, until the entry into the port of Mobile recently?

Eighth interrogatory. If you know, state why the libellants have not proceeded against said ship heretofore for the amount of the
195 claim against her. Was any demand made for payment, and from whom, and when?

Ninth interrogatory. If you know any other matter or thing which would benefit libellants on the trial of this cause, state the same fully, as though interrogated thereto specially.

F. S. BLOUNT,
Proctor for Libellants.

Before me, Richard B. Owen, clerk of the district court of the United States for the southern district of Alabama, personally came F. S. Blount, proctor for libellants in the above-mentioned cause, and, being duly sworn, says that he is informed and believes that Samuel T. Moore and Rowland W. Griffiths are material witnesses for said libellants, and that they reside in the city of New York and State of New York.

(Signed) F. S. BLOUNT.

Subscribed and sworn to before me this 21st day of October, 1859.

R. B. OWEN, *Clerk.*

Filed October 21st, 1859.

R. B. OWEN, *Clerk.*

196 District c't of U. S. for so. dist. of Ala.

WM. A. FREEBORN & CO. }
vs. }
SHIP PROTECTOR. }

Respondent objects to the examination of Samuel T. Moore & Rowland W. Griffiths & Geo. W. Kendall, as witnesses for libellants—

1st. Because it was agreed between the parties that all the depositions should be taken in the case under the statute of the United States of 1788, without interrogatories & upon notice to the parties themselves in New York, & this agreement has been proceeded under.

2nd. Because of said witnesses having been already examined by libellants.

Def't objects to so much of direct interrogatories as asks about the ownership of the vessel, because there is better evidence of ownership; & objects to so much as asks the name of the port painted on the said vessel's stern, because of irrevelancy & because incompetent evidence; also to so much as asks why libellants have not sooner proceeded against said vessel, as incompetent & as calling for an answer which could only be the opinion of the witnesses & not statement of a fact within their knowledge.

197 Reserving these & all other proper objections, the respondent propounds the following cross-interrogatories, viz:

First. Have you any interest of any sort in the result of this suit, &, if yea, what? Are you a partner or in any way concerned in or with the house of W. A. Freeborn & Co., &, if yea, how?

Second. When did you first know anything about the ship Protector? From whom did you get your information? If you have stated anything about the ownership of her on or before Sept. 25th, 1856, you will please state your means of information in regard to her ownership.

Third. If you say anything about goods having been sold by W. A. Freeborn & Co. for the use of said vessel, you will please state whether at that time Joseph Berry & W. M. Berry were not the owners of said ship. State also where they resided at that time. Was not one of them at that time in New York, & was it not by or under his directions that the goods in question were purchased for the said vessel?

Fourth. What is your business occupation? What other business or occupations have you ever engaged in, & for how long periods
198 in each? If you have said that goods furnished by libellants were used in repairing or putting in order the ship Protector, you will please state if you saw them so used. If yea, state in what part of the vessel each of the articles was used.

Fifth. Are you competent to examine a vessel like the Protector & to say, upon your own knowledge, what is required to be done to her in order to maker her seaworthy? If yea, state if you made such an examination of the Protector, &, if yea, at what date & where & who was present, & how did you happen to make such examination.

Sixth. If you have stated that the goods in question were furnished upon any particular credit or security, you will please be particular in stating your means of information upon the subject. Was not your information derived from the plaintiffs, or some of them? If you say it was not, then state particularly how it was obtained & from whom, & state precisely why you say they were furnished upon that particular credit or security. Were not the goods sold to Berry, or to the Berries, on six months' credit, & state if you know whether the note of
199 one or both of them was then expected to be given for the amount.

Seventh. Did you yourself make the sale in question, or were you present when it was made? If yea, be pleased to state exactly how it was done. Did Mr. Berry come to the libellants, &, upon the understanding that he was one of the owners of the Protector, purchase the goods as they were wanted for the vessel? If this was not the way in which the trade was made, you will please to state exactly how it was done—wherein did it differ from this; you will please state particularly. Was any written agreement entered into, of any sort, by Mr. Berry, or anybody for him, at the time of these transactions, in reference to these matters? If yea, you will please attach the same or a literal copy thereof to your answer.

Eighth. If you say that any demand for payment of the goods in question was made at any time, by or from anybody, you will please state exactly when & by whom & of whom, & what answer was made.

Ninth. State anything & everything else in your knowledge likely to be of benefit to the defendant in this suit, as fully as if you were especially interrogated in regard to the same.

200 (Signed) HAMILTONS, *for Defend't.*

N. B.—Respondent objects to any statement, if any, which either of the witnesses may make in regard to the contents of any written paper, & requires the production of such writing.

HAMILTONS.

Joseph C. Lawrence, esq., of New York City, is the commissioner to take answers on behalf of libellants.

F. S. BLOUNT.

Endorsed:

Respondent suggests the name of Gouverneur M. Ogden as that of a suitable person to act as commissioner with or without any other person or persons.

HAMILTONS, *for Defence.*

Filed Nov'r 12th, 1859.

R. B. OWEN, *Clerk.*

201 In the district court of the United States for the southern district of Alabama.

W. A. FREEBORN & Co. }
vs.
SHIP PROTECTOR. }

Examination and depositions of witnesses produced, sworn, and examined by the undersigned commissioners, in virtue of the annexed commission issued out of the honorable the district court of the United States for the southern district of Alabama, taken and reduced to writing, at the office of Gouverneur M. Ogden, one of the commissioners named in the said commission, number seventy-one Wall street, in the city of New York, county and State of New York, on the twenty-ninth day of November, A. D. one thousand eight hundred and fifty-nine, by Joseph C. Lawrence, also one of the commissioners named in the said commission.

SAMUEL T. MOORE, aged twenty-nine years, being duly sworn, answers and deposes as follows:

To the first direct interrogatory witness answers and says: Samuel T. Moore; age, twenty-nine years. I live at number 13 Mo-
202 gomery street, in the city of New York. My place of business is at 486 Water street. I am a clerk to S. P. Powle.

To the second direct interrogatory witness answers and says: I do know such ship. I knew her by seeing her on the dock. I do not know who owned her; I do not know the owners.

To the third interrogatory witness answers and says: Protector, of Bath.

To the fourth direct interrogatory witness answers and says: I do know William A. Freeborn, James F. Freeborn, and Henry P. Gardiner, composing the mercantile firm of W. A. Freeborn & Co. They reside in the city of New York. They carry on their mercantile business at No. 254 South street, in the city of New York. I have known them to have been engaged in their business in said city & State for five years. The business in which they are so engaged is the sale of yellow metal and copper sheathing, & ship-chandlery in general.

SAMUEL T. MOORE.

203 To the fifth interrogatory witness answers and says: I have examined the account annexed to the interrogatories, marked A. I do know of the sale and delivery of the articles therein mentioned. They were sold, I believe, by Mr. William A. Freeborn; they were de-

livered by Thomas Carhare. They were purchased in September, 1856, by General Berry, at 254 South street, in the city of New York; they were purchased for the purpose of repairing the ship Protector; they were used on the vessel's bottom; the value of the articles so purchased was over $3,200; I do not know the exact amount; the prices in said account charged, at the dates when the said articles were sold and delivered, are fair, reasonable, and just prices for the same: I believe the articles purchased were necessary to make the said ship seaworthy; I did not examine to see whether her condition was seaworthy or otherwise before these articles were furnished.

SAMUEL T. MOORE.

To the sixth interrogatory witness answers and says: The said articles were furnished and delivered by the direction and order of
204 General Berry; I do not know who was then in possession of said ship Protector and exercising acts of ownership over her; I do not know upon whose or what credit or security said articles were furnished, except that I know they were furnished in the usual & customary way to said vessel & owners.

To the seventh direct interrogatory witness answers and says: I do not know when the said ship left the port and harbor of New York; I do not know for what port or ports she sailed; I do not know or believe the said ship has since returned to the port of New York, or to any port of the State of New York, or of the United States, until, as I am informed, she recently entered into the port of Mobile.

To the eighth direct interrogatory witness answers and says: I do not know why the libellants have not proceeded against the ship before for the amount of their claim against her, except it was that she has not been in the port since; I do not recollect of any demand be-
205 ing made for payment, but I think there has been one made.

To the ninth direct interrogatory witness answers and says: I do not know of any other matter or thing which would benefit libellants in the trial of this cause.

(Signed) SAMUEL T. MOORE.

Sworn to and subscribed in the presence of us.

(Signed) JOSEPH C. LAWRENCE,
" GOUV. M. OGDEN,
Commissioners.

Cross-interrogatories:

To the first cross-interrogatory he saith: I have no personal interest of any sort in the result of this suit; I mean I have no interest whatever; I am not at the present time a partner or in any way concerned in or with the house of W. A. Freeborn & Co.; I was never in any way concerned as a partner in that house, or interested in their profits, but was only a clerk in their employ, and interested to only to receive my salary, which has been fully paid to me.

To the second cross-interrogatory he saith: I first knew any-
206 thing about the ship Protector as near as can recollect, was in September, 1856; I got my information by seeing the vessel; I know nothing as to the rest of this interrogatory.

To the third cross-interrogatory he saith: I do not know whether, at the time the goods I have mentioned were sold by W. A. Freeborn & Co. for the use of the said vessel, Joseph Berry and W. M. Berry were the owners of the said ship; I do not know where they resided at that time; General Berry, whom I have mentioned, and whose first name I do not

know, was at that time in New York; it was under his direction that the goods in question were purchased for the said vessel.

Fourth cross-interrogatory he saith: My business and occupation is that of clerk; I have been engaged in none other but clerk; I have been engaged in the business of a clerk for about ten or twelve years; I did see the goods furnished by the libellants used in repairing and putting in order the ship Protector; the 2,050 sheets of yellow metal mentioned in said account A, were all used on the vessel's bottom, the—

G. M. O.
J. C. L.

207 —5 barrels of tar, 2 lbs. of composition spikes, 1,206 lbs. of composition nails, 1,100 sheathing paper, 13 papers of felt tacks, 44 lbs. of stem yellow metal, 8 lbs. of composition stem nails, 13 lbs. of stem yellow metal, 4 lbs. of composition stem nails, were also used on the vessel's bottom.

To the fifth cross-interrogatory he saith: I think I am not fully competent to examine the vessel like the Protector, and to say upon my own knowledge what required to be done to her in order to make her seaworthy; I did not make any examination.

S. T. MOORE.

To the sixth cross-interrogatory he saith: I do not know of any particular credit or security on which the goods were furnished, but only that they were furnished in the usual and customary way to said vessel and owners; my means of information on that subject are that M. Freeborn told me that he sold the said yellow metal, &c., the articles named in the account A, to the ship Protector & owners, and also by General Berry coming into the store and stating the articles; these are

208 my only means of information. Mr. Freeborn, whom I have mentioned in the previous part of this answer, is Mr. William A. Freeborn, one of the plaintiffs in this suit. I say that they were furnished in the usual and customary way to vessels and owners, because Mr. Freeborn told me so; I do not recollect whether the goods were sold to Berry or the Berrys on six months' credit; I do not know whether or not the note of one or both of them was then expected to be given for the amount; I have already stated all my knowledge as to all the matters of this interrogatory.

G. M. O.
J. C. L.

To the seventh cross-interrogatory he saith: I did not make the sale in question, nor was I present when it was made; as to the residue of the interrogatory I know nothing.

To the eighth cross-interrogatory he said: I have no recollection of any demand being made for the payment of the goods in question, but I think there was; I cannot tell when and by whom or of whom

209 it was made, and what answer was made.

To the ninth cross-interrogatory he saith: I do not know of anything else in my knowledge likely to benefit the defendants in this suit.

(Signed) S. T. MOORE.

Sworn and subscribed in the presence of us.

JOSEPH C. LAWRENCE,
GOUV. M. OGDEN,
Commissioners.

ROWLAND W. GRIFFTHS, aged thirty-five years, being duly sworn, answers and says as follows:

To the first direct interrogatory he saith: My name is Rowland W. Griffiths; I am 35 years of age; I reside in Williamsburgh, State of New York; my place of business is at 257 South street, in the city of New York; I am a shipwright by occupation.

ROWLAND W. GRIFFITHS.

Second direct interrogatory he saith: I did know a ship or ves-
210 sel called the Protector, built in the State of Maine; she was lying in the port of New York in the year 1856; I cannot remember the month; I acquired my knowledge of said vessel by repairing her; she was owned, from the time I first knew her up to the time I repaired her, by General Berry; I do not know his first name; her owners during that time resided at Bath, State of Maine; I repaired her in 1856; I do not know the month.

To the third direct interrogatory he saith: The name and part painted on the stern of said vessel at the time referred, I do not know that I noticed.

ROWLAND W. GRIFFITHS.

G. M. O.
J. C. L.

To the fourth direct interrogatory he saith: I know William A. Freeborn, James F. Freeborn, and Henry P. Gardiner, composing the mercantile firm of William A. Freeborn & Co.; they reside in the city and State of New York, and carry on their mercantile business at No. 254 South street in that city; I have know them to have been engaged in their business in that city for twelve years; their business
211 is furnishing metal, tar, and that of general ship-chandlery.

ROWLAND W. GRIFFITH.

G. M. O.
J. C. L.

To the fifth direct interrogatory he saith: I know of the sale and delivery of the articles mentioned in the account annexed to the interrogatories and marked A; I think the articles were sold by James F. or William A. Freeborn, I do not recollect which; I cannot say by whom they were delivered; they were purchased by General Berry in the store of William A. Freeborn & Co., at the time when the repairs of coppering the vessel was done, which I have testified; they were purchased for the purpose of being put on the bottom of the said ship Protector; they were used and disposed of for that purpose; I do not now know what was the value of the articles so purchased; the prices in said account charged, at the dates when the said articles were sold and delivered, were fair, reasonable, and just prices for the same; I was at the time aware of the prices charged, and then knew them to be fair,
212 reasonable, and correct; the articles purchased were necessary to make the said ship seaworthy; she was seaworthy before these articles were furnished, but she could not take a voyage without being coppered without being liable to be eaten by worms.

To the sixth direct interrogatory he saith: The said articles were furnished and delivered by the direction and order of General Berry; General Berry was then in possession of said ship Protector, and exercising acts of ownership over her; the said articles were furnished on the credit of the ship and owners.

To the seventh direct interrogatory he saith: I cannot remember when the said ship left the port and harbor of New York; I cannot tell for what port or ports she sailed; I do not remember since seeing the said

ship in the port of New York; I do not know whether she has since returned to any port in the State of New York or of the United States.

ROWLAND W. GRIFFITH.

G. M. O.
J. C. L.

213 To the eighth direct interrogatory he saith: I do not know why the libellants have not proceeded against said ship heretofore for the amount of their claim against her. I do not know whether any demand was made for payment of anybody, or at any time.

ROWLAND W. GRIFFITHS.

To the ninth direct interrogatory he saith: I do not know of any other matter or thing which would benefit the libellants in the trial of this cause. The repairs that I have stated that I did to the vessel was for putting on her bottom the articles charged for in said account A.

(Signed) ROWLAND W. GRIFFITHS.

Sworn to and subscribed in the presence of us.

JOSEPH C. LAWRENCE,
GOUV. M. OGDEN,
Commissioners.

Cross-interrogatory:

To the first cross interrogatory he saith: I have not any interest if any sort in the result of this suit. I am not a partner, or in any way concerned in or with the house of W. A. Freeborn & Co.

214 To the second cross-interrogatory he saith: I first knew about the ship Protector when she wanted coppering, and I did the work upon her as I have testified. I got my information from General Berry—my only means of information in regard to her ownership are from General Berry giving me orders to copper his ship, the Protector.

To the third cross-inferrogatory he saith: The only one I know in the matter, as owner, was General Berry, and I have no knowledge whether Joseph Berry and W. M. Berry were or not the owners of said ship. General Berry, whose first name I do not know, at that time resided in Bath, State of Maine. Unless one of Joseph Berry and W. M. Berry be General Berry, I do not know where either of them resided at that time. General Berry was at that time in New York; it was under his directions that the goods in question were purchased for the said vessel.

ROWLAND W. GRIFFITH.

215 To the fourth cross-interrogatory he saith: My business is that of a shipwright; I have never been engaged in any other business or occupation; I have been engaged in that business for fifteen years; I did see the goods furnished by the libellants used in repairing and putting in order the ship Protector; each and all of them were used by being put on the bottom of the vessel.

To the fifth cross-interrogatory: I am competent to examine a vessel like the Protector, and to say, upon my own knowledge, what is required to be done to her in order to make her seaworthy. I did not examine the Protector in order to ascertain whether she was seaworthy or whether anything was required to be done to her to make her seaworthy; all I did was to put on the metal as I was directed.

ROWLAND W. GRIFFITH.

G. M. O.
J. C. L.

To the sixth cross-interrogatory he saith: My means of information upon the snbject of the goods in question being furnished upon the

credit of the ship and owners, are only that I presume it was
216 because that is the usual custom. My information was not derived from the plaintiffs, or any of them; I have already stated why I say they were furnished upon the credit of the vessel and owners. I do not know whether or not the goods were sold to Berry, or to the Berrys, on six months' credit, or whether or not the note of one or both of them was then expected to be given for the amount.

To the seventh cross-interrogatory he saith: I did not make the sale in question, but I think I was present when it took place. Mr. Berry came to the libellants, and, upon the understanding that he was one of the owners of the ship Protector, purchased the goods as they was wanted for the vessel. I do not know of any written agreement entered into of any sort of by Mr. Berry, or anybody for him, at the time of these transactions in reference to these matters. I have stated all my knowledge of the matters in this interrogatory.

To the eighth cross-interrogatory he saith: I know nothing of
217 any of the matters of this interrogatory.

To the ninth cross interrogatory he saith: I do not know of anything else in my knowledge likely to be of benefit to the defendant in this suit.

(Signed) ROWLAND W. GRIFFITHS.

Sworn and subscribed in the presence of us.

JOSEPH C. LAWRENCE,
GOUV. M. OGDEN,
Commissioners.

STATE OF NEW YORK, *New York City & County:*

We, G. M. Ogden and Joseph C. Lawrence, the commissioners named in the annexed commission issued from the district court of the United States of the southern district of Alabama, to examine Samuel T. Moore and Rowland W. Griffiths, two of the witnesses named in the said commission, do hereby certify that the said witnesses were produced and sworn on the Holy Evangelist of Almighty God, and their testimony reduced to writing by Joseph C. Lawrence, one of the commis-
218 sioners named in said commission, and was duly read over to each of them, and subscribed in our presence by each of them, on the thirteenth day of November, A. D. one thousand eight hundred and fifty-nine.

JOSEPH C. LAWRENCE, } *Commissioner.*
GOUV. M. OGDEN, }
Commissioners.

Fees for executing commission, $75; ½ of which is paid by defendants & ½ by plaintiffs.

219

220

221 *Agreement of proctors as to depositions.*

WILLIAM A. FREEBORN & Co. }
vs.
THE SHIP PROTECTOR. }

For the purpose of obtaining trial of this cause, it is agreed, by libellants' proctors, to be admitted that the persons named in the depositions as bearing the same name are the same persons; & on the part of the

defendant's proctor he waives the objection to one of the commissions that no commissioner are named in it; it is agreed between the parties, in case the decree of the district court is against the libellants, they may have twenty days from the decree within which to appeal; & in case the decree is in favor of libellants, an appeal may be taken by James C. Bell at any time within twenty days thereafter; and it is admitted he will be the proper party, in the absence of Capt. Crocker, to take such appeal, if the decree should be for libellants. It is also agreed that Mendal Crocker was the master of the ship Protector, and in possession
222 of her, as the agent of the said James C. Bell, at the time the libel in this cause was filed.

Mobile, Dec. 15th, 1859.

F. S. BLOUNT,
Proctor for Libel'ts.
HAMILTONS, *for Def't.*

Filed as of Dec. 17th, 1859.
Dec. 24th, 1859.

R. B. OWEN, *Cl'k.*

And the said cause having been regularly continued to the December term, 1859, of said court, afterwards, to wit, on the 24th day of December, 1859, the same being a day of the term of said court, begun & held on the second Monday of December, 1859, came the parties, by their proctors, & this cause having been fully heard, thereupon the court pronounced the following opinion & decree, to wit:

Opinion of the court.

Dist. court of the United States, so. dist. of Alabama.—December term, 1859.

WM. A. FREEBORN & CO.
vs.
THE SHIP PROTECTOR.

1st. A motion was made, in behalf of the claimants, to suppress the depositions of Thomas Cashere, Wm. B. Dunley, Geo. W. Kenal, & R. W. Griffiths, taken on interrogatories and cross-interrogatories,
223 filed under a commission issued from this court. This motion is made on two grounds—1st, that there was an agreement between the parties, or their proctors, not reduced to writing, to the effect that the depositions should be taken before a commissioner of the U. S. court in New York, where the parties & witnesses all reside; &, 2nd, in pursuance of this agreement the depositions of these witnesses had been taken, & are now in court, before their depositions were taken under the commission issued from this court, & the party could not retake the depositions without first obtaining an order of court.

Under the 14th rule of practice of this court the first ground of objection cannot be noticed by the court, the alleged agreement not being in writing. The second ground of objection is addressed to the direction of the court, according to a late decision of the supreme court of Alabama (Brobnax vs. Sullivan, 29 Ala., 320), & in this case I think there were sufficient reasons for retaking the depositions. The motion to suppress the depositions is therefore refused.

224 2nd. Several exceptions are taken to the libel; but as they present substantially the same questions which arise in the evidence,

they will be considered & disposed of in connection with the law applicable to the facts proved by the evidence.

3rd. The facts adduced from the evidence in this case are substantially as follows: The ship Protector was built in the State of Maine in 1854. The true owners of the ship were Gen'l Joseph Berry & his son Wm. M. Berry, the latter owning only one-eighth of the ship; & they were resident citizens of Maine. The ship was registered in the custom-house at Bath, Maine, in their names as owners. In August & September, 1856, the ship was in the port of New York, & it was deemed necessary that it should be coppered and repaired, to fit it for sea voyages. It was taken into the sectional dock to be coppered and repaired. On the 29th of August, 1856, Gen'l Berry, the principal owner, being then in New York, obtained an advance of money from one
225 James W. Phillips, &, to secure the repayment of the money so advanced, bills of sale of the ship, absolute on their face, were executed by the owners to Phillips. It was agreed between them, however, that the Berrys were to have the possession & management, & its savings & profits; & Phillips gave them a written obligation to reconvey the ship to them, on the payment of the money he had advanced. Gen'l Berry remained in possession and control of the ship.

On the 25th of September, 1856, Phillips recorded these bills of sale in the custom-house at New York. The old registry was surrendered & it was registered in the New York custom-house, in the name of Phillips, as sole owner. In September, 1856, Gen'l Berry procured from the libellants a quantity of yellow metal & other materials for coppering and repairing the ship. These articles were accordingly furnished & delivered by the libellants, principally on the 18th of September, & a small portion on the 24th of September, 1856. The evidence shews clearly that the articles so furnished were necessary & were articles used on
226 the ship, & were worth $3,243\frac{83}{100}$. At the time when these articles were ordered & delivered, there was no master or crew of the ship; & Gen'l Berry was in New York, & ordered & selected the articles. The ship sailed from New York for London; from London it went to San Francisco, thence to the Chincha Islands, thence to London, thence to Mobile. Soon after its arrival in Mobile, in February, 1859, the libellants filed their libel in this case, claiming a lien on the ship for the amount due them for the materials furnished as before stated. It was claimed by the master, for I. C. Bell, as before stated, & it is admitted that the master held it under & for I. C. Bell, as owner. These are the clear, undisputed facts in the case.

4th. Much evidence was taken to prove an alleged custom or usage in New York, to the effect that material-men there generally consider that the ship & owners are bound for materials furnished for a ship; & that the generally charge them to the ship & owners, and con-
227 sider that they have a lien on the ship for the price of the materials furnished.

This, I think, is not a custom or usage of trade, but simply the opinion of the material-men in New York as to what is the law, or what are their legal rights. This evidence was all objected to by the claimant, & in my judgment it is not admissible. I exclude it entirely in considering the case.

5th. There are but two material questions of fact about which the advocates for the libel & claimants differ. The first is, as to who was the owner of the ship when the articles were furnished & delivered in September, 1856. The contract entered into between Berry & Phillips, on the 29th August, 1856, was in substance a mortgage. Its legal

effect was that Phillips became mortgagee of the ship, Berry, mortgager, remaining in possession & control, & entitled to the earnings and profits. It is well settled that such a mortgager is considered as the real owner as to all third persons. I am, therefore, of opinion,
228 that the Berrys were the real owners of the ship at the time referred to.

6th. The second question of fact as to which the parties differ is, whether the articles were furnished on the personal credit of Berry, or on the credit of the ship; & if on the credit of the ship, whether they could not have then been procured without the credit of the ship. It is clear, from the evidence, that the articles were contracted for & ordered by the libellants, by Gen. Berry himself. He selected and bargained for them. He was at the time a large ship-owner, owning wholly or in part five or six other vessels besides the Protector. He did not fail until February, 1857, five months after these articles were supplied. The weight of testimony, I think, is that he had sufficient credit in New York, in September 1856, to have procured these articles on his own personal credit exclusively. The conduct of the libellants tend to shew that they considered his personal credit good enough for the price of these articles. They allowed the ship to leave New York,
229 in October following, on a distant foreign voyage, without taking any steps to detain her, or to enforce their alleged lien. They ordered a bill of the articles to Mr. Tyler, Berry's son-in-law, who was engaged in business in New York. Tyler offered to give them his note for the amount of the account, but they refused to take it, & said they wanted Gen. Berry's note for it at six months. This they would hardly have done if they had not considered Berry solvent & his credit good.

7th. The case then, as I consider it made by the evidence, is that material-men in the city of New York furnished materials for a foreign ship in that port, which were necessary for, & actually used on the ship; but these materials were furnished, not upon the order of the master of the ship, but upon the order of the principal owner of the ship, who were present in New York, & contracted for them. And there is entirely no satisfactory evidence that he could not
230 have procured them on his own personal credit alone, without an express or implied lien being given on the ship. The lien given by the State local law was lost by the ship leaving the State; & if it had not been lost it could not be enforced in this court under the late rule & decision of the Supreme Court of the United States. (McGuire vs. Card, 21 Howard's Rep., 248.) The only question remaining is, whether material-men, under the facts stated, have a lien on the ship under the general maratime law. It is, no doubt, often laid down by writers, & in many adjudged cases, in general terms, that material-men have a lien on a foreign ship for materials furnished for the ship. According to the latest decisions of the Supreme Court this rule is laid down too broadly. In the St. Iago de Cuba (Wheaton, 409, 416), the court say,
"It is not in the power of any one but the ship-master, not the
231 owner himself, to give these implied liens on the vessel;" & again, "The law mentioned attaches the power of pledging or subjecting the vessel to the material-men to the office of the ship-master." The necessities of commerce require that when remote from the owner he should be able to subject his owner's property to that liability, without which it is reasonable to suppose he will not be able to pursue his owner's interest. But when the owner is present the reason ceases & the contract is supposed to be with the owner himself, on

his ordinary responsibility, without a view to the vessel as the fund from which compensation is to be derived.

In Pratt v. Reid (19 Howard's R., 359), it is expressly decided in reference to materials furnished to a foreign ship, on the order of the owner, who was also master, that the material-men had no lien. The decision is made on the ground that it is necessary for the material-men to prove not only a necessity for the supplies, but also a necessity for a credit on the vessel.

232 In this the People's Ferry Company v. Beers (20 How. R., 393, 402), Justice Catron, delivering the opinion of the court, says that "liens on vessels encumber commerce, & are discouraged; so that when the owner is present no lien is acquired by the material-man." These late cases have been followed in the district court of the U. S. in the city of New York, in the case of Collins v. the schooner Carmine, reported in the A. Law Register for Nov., 1858. They are controlling authority in this court, & appear to me to be decisive of the case. A decree must therefore be rendered, dismissing the libel in this case, at the costs of the libellants.

WM. G. JONES, *Judge.*

And thereupon, in accordance with the foregoing opinion, the following decree was rendered:

Decree.

District court of the United States, southern district of Alabama.—December term, 1859.

WILLIAM A. FREEBORN & CO.
vs.
THE SHIP PROTECTOR.

DEC. 24, 1859.

In this cause came the parties by their proctors, and the
233 respondent having heretofore moved the court to suppress the depositions of Thomas Cashare, Wm. B. Danly, Geo. W. Kendall, & R. W. Griffiths, taken on interrogatories & cross-interrogatories, under a commission from this court, on the ground, 1st, that there was an agreement between the parties to the effect that the depositions should all be taken before a U. S. commissioner in New York, where the parties & witnesses all resided, & 2nd, that the depositions of these witnesses have been taken in pursuance of this agreement, before the taking of their depositions under the commission, & that said first-taken depositions are now in court, & the said motion having been considered by the court, the same is overruled.

And the case having been argued & submitted to the court, upon the libel, claim, exceptions, answer, exhibits, depositions taken under commissions from this court, & the other depositions on file in this cause, except the depositions of R. W. Griffiths, Wm. B. Danly, & Samuel F. Moore, taken before the United States commissioner, & also
234 upon the agreement of counsel filed in this cause as of the 17th inst., & the court having duly considered of the cause, it is ordered, adjudged, & decreed by the court, that the libel be, & the same is hereby, dismissed at the costs of the libellants, &, unless the same are paid, execution is ordered to issue therefor against the libellants, & Stephen Twelves, their surety in the stipulation for costs, filed by the said libellants.

And afterwards, to wit, on the 31st day of December, 1859, the same

being another day of the said last-mentioned term of said court, the following proceeding was had herein, viz:

Appeal.

WILLIAM A FREEBORN & Co.
v.
THE SHIP PROTECTOR.

This day came the libellants, by their proctors, & prayed an appeal from the decree rendered herein at the present term of this court,
235 to the circuit court of the United States for the fifth judicial circuit & southern district of Alabama, to be heard at the April term, 1860, of said court. And thereupon it is ordered by the court, that said appeal be granted, upon the said libellants entering into bond in the sum of three hundred dollars, with sufficient security, to be executed within days from the date of this order, the bond to be conditioned according to law; the security to be approved by the judge of this court.

Appeal bond.

UNITED STATES OF AMERICA,
Southern District of Alabama:

Know all men by these presents, that we, William A. Freeborn, James F. Freeborn, & Henry P. Gardiner, partners, under the name & style of William A. Freeborn & Co., Stephen Twelves, are held and firmly bound unto Mendal Crocker, master of the ship Protector, in the sum of three hundred dollars; for the payment whereof we bind ourselves & each of us, our & each of our heirs, executors, & administrators, jointly &
236 severally, firmly by these presents. Sealed with our seals & dated this 3rd day of January, A. D. 1860.

The condition of this obligation is such, that whereas an appeal has been taken from the decree of the district court of the United States for the southern district of Alabama, as made on the 24th day of December, A. D. 1859, in a certain cause wherein the above-named William A. Freeborn, James F. Freeborn, & Henry P. Gardiner are libellants, against the ship Protector, her tackle, apparel, & furniture, whereof the said Mendal Crocker is the claimant:

Now, therefore, if the above-bound William A. Freeborn, James F. Freeborn, Henry P. Gardiner, & Stephen Twelves, shall well & truly pay & satisfy all such damages & costs as may be awarded against them, the said apellants, by the decree of the circuit court of the United States for the fifth judicial circuit & southern district of Alabama, then and in such case the above obligation to become null & void; otherwise to be and remain in full force and virtue.

237 WM. A. FREEBORN, [SEAL.]
By att'y in fact, F. S. BLOUNT.
STEPHEN TWELVES. [SEAL.]

Attest:
R. B. OWEN, *Clk.*

Approved:
WM. G. JONES, *Judge.*

Filed Jan'y 3rd, 1860.
R. B. OWEN, *Clk.*

Agreement of proctors as to transcript.

In the dist. court U. S. for the sou. dist. Ala.

WILLIAM A. FREEBORN & Co.
vs.
THE SHIP PROTECTOR.

The undersigned proctors for the libellants & claimant in this cause do consent & agree that the clerk of the district court of the United States, in making out a transcript of the case for the circuit court of the United States, on appeal, may omit the insertion in said transcript of the interrogatories & cross-interrogatories above the answers of each witness, & that direct and cross-interrogatories shall be inserted but once, immediately preceding the answers of all the witnesses to
238 whom they are addressed. In other words, the direct & cross-interrogatories are to be inserted but once in said transcript. It is also understood & agreed that but one caption & certificate shall be inserted with the testimony of the other witnesses examined before U. S. commissioner.

F. S. BLOUNT, *for Libellants.*
HAMILTONS.

Filed January 26th, 1860.

R. B. OWEN, *Clk.*

Certificate of record.

District court of the United States, southern district of Alabama.

I, R. B. Owen, clerk of the district court of the United States, do hereby certify that the foregoing one hundred & sixty-four pages & seventeen lines (that portion containing the testimony is omitted from this record) contain a full and complete transcript of the record & proceedings had in a certain cause lately pending in said court, wherein William A. Freeborn & Co. were libellants, & the ship Protector, her tackle, &c., was defendant & respondent, as the same remains of record and on file in my office.

239 In testimony whereof, I have hereunto set my hand & affixed the seal of said court, this the 3rd day of February, A. D. 1860.

[SEAL.] R. B. OWEN, *Clerk.*

Publication of testimony.

Adjourned term, 3rd Monday of June, 1860.—June 18th, 1860.

WILLIAM A. FREEBORN & Co.
vs.
THE SHIP PROTECTOR. } Appeal from district court.

It is ordered by the court that the testimony on file in this cause be published.

Agreement to submit the cause.

June 25th, 1860.

WILLIAM A. FREEBORN & Co.
v.
THE SHIP PROTECTOR. } Appeal from the district court.

In this cause the parties submit the same, with leave of the court, they agreeing that either may improve his testimony, on or before the

1st day of December next, & that the opinion and decree of the court shall not be filed until after that date, to enable them to do;
240 but either party reserves the right to object, upon his brief, to any deposition or evidence now on file, or which may hereafter be filed, or submitted as evidence.

Decree of affirmation.

Circuit court of the United States, southern district of Alabama.

WILLIAM A. FREEBORN, JAMES F. FREEborn, & Henry Gardiner, merchants, *vs.* SHIP PROTECTOR—MENDAL CROCKER, CL'M'T. } On appeal from the district court.

This cause was submitted to the presiding judge of this court, by agreement, in December, 1860; and the record & proceedings in this cause, and the final decree, having been considered, for the reasons set forth in the opinion of the judge of the district court, the decree of that court is hereby affirmed, with costs.

J. A. CAMPBELL,
Associate Justice of the Supreme
241 *Court of the United States.*

Received & filed April 5th, 1861.

JOHN A. CUTHBERT,
Clk Dist. C't Conf. St., at Mobile.

Circuit court of the United States for the fifth judicial circuit and southern district of Alabama.

I, Nathaniel W. Trimble, clerk of the court aforesaid, do hereby certify that the foregoing pages, numbered from 1 to , inclusive, contain a true and complete transcript of the record in the case of William A. Freeborn and Company versus the ship Protector, as the same appears of record in my office.

In witness whereof, I hereunto set my hand and cause the seal of said court to be affixed this 7th day of October, A. D. 1869.

[SEAL.] NATHANIEL W. TRIMBLE, *Clerk, &c.*

242 Received of Freeborn & Co. fifty-nine dollars and seventy-five cents for this transcript.

N. W. TRIMBLE,
Clerk U. S. Cir. C'rt Fifth Cir. & So. Dist. Ala.

(Indorsed:) No. 3509½. Wm. A. Freeborn & Co. vs. the ship Protector. Transcript from the United States circuit court for south. district of Alabama.

(Indorsement on record:) S. Alabama C. C. U. S. No. 274. William A. Freeborn, James F. Freeborn, & Henry P. Gardiner, merchants, as W. A. Freeborn & Company, lib'ts & appellants, vs. the ship Protector, her tackle, &c.—James C. Bell, claimant.

Filed 21st October, 1869.

Supreme Court United States.

WILLIAM A. FREEBORN & CO.
Appellants.
vs.
THE SHIP PROTECTOR AND OWNERS,
Appellees.
No. 83.

Motion to dismiss.

BRIEF OF P. PHILLIPS.

The petition for appeal is entitled William A. Freeborn & Co., and prays for an appeal in the name of William A. Freeborn & Co.

The allowance of the appeal is in the same name and style.

The bond recites the appeal in the name of William A. Freeborn & Company.

The citation also directs the party to appear in the cause wherein William A. Freeborn & Company are appellants.

Who constitute the Co. or Company, no where appears in these proceedings. That it is necessary that the names of all the appellants and appellees should be set forth, is decided by the following cases:

Writ of Error by "Mary Deneale *and others*," who the

others are say the Court cannot be known, for their names are not given *in the Writ of Error*, as they ought to be.

8 Pet., 526.

Writ of Error in the name of "the heirs of Nicholas Wilson."

12 Pet., 140.

Writ of Error in the name of Samuel Smyth sued out against *Strader, Perrine & Co.*, declared to be vicious because the names of all the parties were not set out.

12 How'd. 327.

Writ of Error, "F. Fletcher et al vs. Charles Davenport et al."

16 How'd., 153.

In all these as well as in subsequent cases the writ of error has been dismissed because the names of all the appellants or all the appellees were not given in the writ.

Is the rule different when applied to appeals?

In the case of Owing v. Kincannon, this Court say—

"By the judicial act of 1789, decrees in chancery could be brought before this Court only by writ of error. The appeal was given by the act of 1803, and this declares that such appeals "*shall be subject to the same rules, regulations, and restrictions as are prescribed by law in cases of writs of error.*" Previous to the passage of this act the decree under consideration could have been brought into this Court only by writ of error, in which all the defendants must have joined. The language of the act which gives the appeal, appears to us to require that it should be prosecuted by the same parties who would have been necessary in a writ of error."

7 Pet., 403.

The present libel was filed by "William A. Freeborn,

James F. Freeborn, and Henry P. Gardner, of the city of New York, merchants against the Ship Protector."

The decree of the District Court dismissed the libel "at the costs of the *libellants*, and ordered execution therefore to issue against the libellants." This decree was in all things confirmed by the Circuit Court.

We have then a libel filed by William A. Freeborn, James F. Freeborn, and Henry P. Gardner, a decree against them as the libellants, and an appeal from that decree in the name of *William A. Freeborn and Company.*

Doubtless by searching the record in the case we could gather the fact, that these three named libellants did compose the name of said firm, and a like result may have been obtained in all the cases in which the Court dismissed the writ of error.

The appellate jurisdiction of this court is invoked by the writ of error or appeal. By these two modes the jurisdiction attaches, and by them the cause is removed from the inferior court.

When a decree is joint against several all must appeal, without there is a summons and severance, and, as a consequence of this, whether the cause is to be removed by writ of error or appeal, all the parties must be named in the process by which the removal is effected.

It is difficult, therefore, to understand why the rule so frequently applied by this Court to writs of error should not govern the removal of a case by appeal.

The decisions point to no such distinction, and the reason of the rule is equally applicable to both.

In the case of the "heirs of Wilson," already cited, the Chief Justice says: "in both of the cases referred to, it

appears that the motions to dismiss were not made at the term, or at the time of appearance in this Court; but each of the cases had been depending here two years before the motion was made. The rule of this Court therefore is, that where there is a substantial defect in the APPEAL, or writ of error, the objection may be taken at any time before judgment, on the ground *that the case is not legally before us, and that we have no jurisdiction to try it.*"

We submit therefore that this appeal must be dismissed.

P. PHILLIPS,

Of Counsel for Appellees.

United States Supreme Court.

DECEMBER TERM, 1871.

No. 83.

WILLIAM A FREEBORN & CO.
Libellants and Appellants.

vs.

Ship PROTECTOR, her Tackle,
JAMES C. BELL,
Claimant—Appellee.

The case comes before the Court on three motions:

I—The motion of the respondent and appellee to dismiss the appeal upon the ground that the proceedings on appeal do not set forth the names of the parties appellant.

II—The motion of the appellants to amend the proceedings on appeal by the record and proceedings in the cause; and

III—The motion of appellants to amend the libel by asking that the decree may be rendered as well for the amount of the account or demand "and interest and damages thereon."

1st. The record in this cause was filed in this Court on the 29th day of October, 1869.

A motion was made at the December Term, 1870, to dismiss the appeal in this cause because it was taken after the lapse of five years from the date of the decree rendered in the Court below.

This motion was denied.

At the present Term of this Court, the present motion is filed to dismiss the cause for the reason that the proceedings on appeal do not set forth the names of the parties appellant.

It is answered that this motion should have been made at the first Term of this Court, to which said proceedings were returnable, and is now too late.

Carroll vs. Dorsey, 20th Howard S. C. R. 207.
Chaffee vs. Hayward, 20th Howard S. C: 209.
The Commander in Chief. 1 Wallace S. C. 43.
Mechanics Bk. of Alexandria vs. Seton, 1 Peters, 299.

2d. The proceedings on appeal may be amended by the record and proceedings in the cause.

In Admiralty, amendments are freely allowed.

It is the settled practice in Admiralty proceedings *where merits appear upon the record*, but the libel is defective to allow the party to assert his rights in a new allegation.

The Schooner Adeline, 9th Cranch, 244; 7th Cranch, 496; 4th Wheaton, 52; 8th do. 380.

In Smith vs. Jackson, 1st Paine C. C. R. 486, in commenting upon the 33d Section of the Act of 1789, the Court says:

The Statute gives to the Circuit Courts an appeal from the District Court power to allow any amendments of defects of *form* occurring in the Court below, which could have been amended there, or to disregard them in giving judgment. This power does not extend to defects of substance; but the last clause of the Statute embraces matter

of *substance*, and it authorizes the Court at any time to amend any defect in the process and pleadings upon such conditions as the Court shall direct. This power is confined to the process and pleadings, and reaches the defects; it does not extend to the judgment. When, therefore, an amendment is made in substance, it must be while the proceedings are in *fieri* and before judgment; and the Court then does it upon such terms as shall be deemed just and equitable.

In Tibbs vs. Parrott, 1 Cranch, Circuit Court Rep. 177, the Court says:

A declaration in the name of a firm may be amended by leave of the Court by inserting the names of the members of the firm. This does not touch the nature of the cause of action.

In the case (cited by Appellee's counsel) of De Neale vs. Stump's Ex'rs, 8 Peters, 526,

The reason of the rule is stated by C. J. Marshall in this case to be, that "all the parties must be joined, and their names set forth in order that the Court may proceed to give a proper judgment in the case."

The rule does apply in an Admiralty case.

In the case of the Venus, 1st Wheaton's Reports, it is decided that "on an appeal to the Supreme Court in an Admiralty cause, the cause is before that Court, as if in the Inferior Court."

The whole record and proceedings being then before this Court, and the trial being *de nova*, all the parties in the Court below, whose names are in the record and proceedings, are before the Court—the libel setting forth the names of the individuals composing the firm of Wm. A. Freeborn & Co.—Penhallow vs. Doane, 3 Dallas R. 54.

Now the rule, as above stated, will be complied with at the hearing of the cause—all the parties being before it in the proceedings—and "the Court may proceed to give a proper judgment in the case."

The proceedings in Admiralty are regarded liberally by the Courts, and the strict rules of practice prevailing in cases at common law are not enforced.

All the decisions cited by the counsel of Appellee were upon writs of error, and, therefore, governed by the rules of the common law.

By the 24th Rule of this Court regulating the practice in Courts of Admiralty, it is among other things provided as follows:

"And new counts may be filed, and amendments in matters of substance may be made upon motion at any time before the final decree, upon such terms as the Court shall impose."

This rule is conclusive against the motion now before the Court.

3d. It is moved in behalf of the appellant to amend the libel by asking that the decree may be rendered as well for the amount of the account on demand "and interest and damages thereon."

In Weaver vs. Thompson, 1 Wall, J's. C. C. Rep. 343, an appellee in admiralty was allowed to amend his libel in the Appellate Court so as to make a claim there for damages above costs, caused by a vexatious appeal.

F. S. BLOUNT,

Proctor for Libellant.

Supreme Court of the United States

No. 88.

WILLIAM A. FREEBORN, JAMES F. FREEBORN, and HENRY P. GARDINER, Merchants, as WM. A. FREEBORN & CO.,

Appellants.

against

THE SHIP *PROTECTOR*, her Tackle, &c., JAMES C. BELL, Claimant,

Appellee.

PETITION FOR RE-HEARING AND RE-INSTATEMENT.

F. S. BLOUNT,
Proctor for Appellants.

JAMES M. CARLISLE,
Of Counsel.

NEW YORK:
Hallock & Sherman, Law and Jobs Printers, 49 & 51 Ann Street.
1871.

To the Supreme Court of the United States.

THE petition of William A. Freeborn, James F. Freeborn, and Henry P. Gardiner, merchants, as Wm. A. Freeborn and Company, as libellants and appellants, against the ship *Protector*, her tackle, &c. James C. Bell, claimant, in said Supreme Court, respectfully showeth,

That on the argument to dismiss for want of jurisdiction, the attention of the court was not drawn to the minutes and docket entries of the Court, which show that Mr. Phillips' appearance was not special for the motion, but had stood *general* for nearly a year after his first motion was overruled.

They are as follows:

The record in said cause was filed in the court on the 21st day of October, 1869.

On the 21st March, 1870, a motion to dismiss said cause, on the ground that the appeal was not taken within the period allowed by law, was filed in said Court by Mr. P. Phillips who appeared for the motion.

On the 22d April, 1870, the motion was argued, and on 30th April, 1870, said motion was denied.

On the 30th April, 1870, a suggestion and motion

for *certiorari* was filed, and THE CAUSE WAS CONTINUED TO DECEMBER TERM, 1870.

At the December Term, 1870, and on the 2d of December, the *certiorari* was granted, and writ issued on the 6th of December.

On 27th December, the *certiorari* and return was filed in the Supreme Court.

On 13th January, 1871, a motion was filed by Mr. Phillips, to dismiss, on the ground that the proceedings on the appeal do not set forth the names of the parties appellants.

On the 16th January, 1871, on motion of Mr. Carlisle, associate proctor for libellants, *which was opposed by Mr. Phillips*, it was ordered that the amended return referred to in the motion should be allowed to be filed and made part of the return to said writ of *certiorari*.

On the same day it was stipulated in writing that said cause be postponed, with the leave of the court, until the 20th day of February next, in order to afford time to the appellee's counsel (Mr. Phillips) to prepare for the argument, after the amended return to the *certiorari* shall be printed, as this day ordered by the court. This stipulation was signed by Carlisle for appellants, and P. Phillips for appellee.

On the same day it was ordered by the court, that said cause be and the same is hereby set down for argument, on Monday the 20th day of February, 1871, pursuant to the stipulation of counsel filed this day.

On the 27th day of January, the second motion of Mr. Phillips to dismiss was argued, and the court on the 30th January, 1871, decreed that said appeal be dismissed.

Your petitioner submits to the consideration of the Court, the following facts as appearing on the dockets

and minutes of the Court, and the printed record in the cause.

1*st*. That upon the denial of the first motion to dismiss, the name of Mr. P. Phillips, as proctor for the claimant and appellee, continued on the docket, and that the motion having been overruled on the 30th April, 1870, his appearance being continued became a general appearance, as in ordinary cases.

2*d*. That on 16th January, 1871, on motion by proctor for libellants and appellants, it was ordered that an amended return to the *certiorari* should be filed.

This motion was argued and opposed by Mr. Phillips as proctor for appellee.

3*d*. On the same day Mr. Phillips entered into a written stipulation with the proctor for appellants, postponing, by leave of the court, the hearing of the cause until the 20th of February, to afford him (Mr. Phillips) time to prepare for the argument.

The leave of the Court was granted, pursuant to the stipulation of counsel, filed on that day.

Upon these facts, your Petitioner submits that the appearance of Mr. Phillips became, and continued, as a general appearance from the 30th of April, 1870, when his first motion was denied.

This Court has decided that appearance cures all defects and irregularities in process, and want of service.

4 *Cranch.*, 180;
3 *Cranch.*, 498;
Penhallou agt. *Doane*, 3 *Dalley*, 54;
Chaffee agt *Hayward*, 20 *How.*, 205, 209;
McDonough agt *Millaudon*, 3 *How.*, 693;
Buckingham agt. *McLean*, 13 *How.*, 150;
The Merino (in admiralty), 9 *Wheat.*, 391.

Your Petitioners respectfully call the attention of the

Court to the facts appearing upon the printed record of the cause, and the acts of the Court therein, as follows:

1*st*. Upon the motion of the proctor for the libellants *the Court ordered* that a *certiorari* issue in this cause to the clerk of the Circuit Court to complete the record.

2*d*. The writ of *certiorari* ordered by the Court *set out in full the names* of Wm. A. Freeborn, James F. Freeborn and Henry P. Gardiner, as composing the firm of Wm. A. Freeborn & Co. See printed record, filed Dec. 27, 1870. p. 1.

3*d*. *The Court ordered* said *certiorari*, and the returns thereon, to be filed in the cause, made part of the record, and printed.

4*th*. In the printed *opinion of the Court*, delivered by Mr. Justice BRADLEY, the case is entitled; "Wm. A. "Freeborn, James F. Freeborn, and Henry P. Gardiner, "merchants, as, Wm. A. Freeborn & Co., Libellants, "Appellants, *against* The Ship *Protector*, her tackle, "&c., James C. Bell, Claimant."

It is respectfully submitted that in these ~~first~~ four particulars, the Court, in view of all the facts herein set forth, assumed and rightfully exercised jurisdiction in the cause.

Your petitioners has attached to this ~~this~~ petition copies of the entries on the docket, and minutes of this Court in this cause, and the opinion of Mr. Justice BRADLEY, and respectfully prays reference to them.

They respectfully submit that the last motion being deferred *until the time for bringing up a second appeal had elapsed*, and much expense incurred by appellants, is without merit, and not entitled to the favorable consideration of the Court.

The motion to dismiss because the appeal does not set out the names of the parties, is analogous to, and does the office of, a plea in abatement, and must, accord-

ing to the practice of the common law Courts, be filed at the appearance term.

The stringency of the rule invoked by Mr. Phillips in this motion has been relaxed in the case of *Day* agt. *Washburn* (23 *How.*, 309), where the cases cited by him were relied on. One of these, *Davenport* agt. *Fletcher* (16 *How.*, 144), concludes the judgment as follows: "The case is dismissed, with leave, however, "to the counsel for plaintiff to move for its reinstate- "ment during the present term."

Your petitioners respectfully pray the Court to grant them a rehearing, and reinstate the cause.

F. S. BLOUNT,
Proctor for Libellants and Appellants.

JAMES M. CARLISLE,
Of Counsel.

Docket Entries.

SUPREME COURT OF THE UNITED STATES.

WILLIAM A. FREEBORN *et al.*
Appellants,

against

THE SHIP *Protector*, &c., JAMES C. BELL, Claimant.

1869, Oct. 21.—Record received and filed.
1870, March 21.—Motion of Mr. Phillips to dismiss, filed.
1870, April 22.—Motion argued.
1870, April 30.—Motion denied.
1870, April 30.—Suggestion and motion for writ of *certiorari* filed.
1870, Nov. 4.—Motion for Commission to retake testimony, filed.
1870, Nov. 4.—Affidavit of Trimble & Blount, filed.
1870, Nov. 4.—Interrogatories to Jos. Berry, filed.
1869, December Term——*Continued.*
1870, Dec. 2.—*Certiorari* and Commission granted.
1870, Dec. 6.—*Certiorari* issued to Mr. Blount.
1870, Dec. 27.—*Certiorari* and return filed.
1871, Jan'y 13.—Motion of Mr. Phillips to dismiss, filed.
1871, Jan'y 16.—Order of Court and addition to *certiorari*, filed.

1871, Jan'y 16.—Agreement of Counsel and Order fixing case for argument 20th February.

1871, Jan'y 23.—Motion to amend appeal, &c., filed by Mr. Blount.

1871, Jan'y 26.—Motion to amend Libel filed by Mr. Blount.

1871, Jan'y 27.—Motions argued.

1871, Jan'y 30.—Decreed to be dismissed for the want of jurisdiction.

SUPREME COURT, UNITED STATES.

W. A. FREEBORN & Co. *against* Ship *Protector.* } No. 274.

THE appellee moves to dismiss the appeal in this case, on the ground that the same was not taken within the period allowed by law.

P. PHILLIPS,
Sol. for Appellee.

Washington, Mar. 21, 1870.
Filed, 21st March, 1870.

FROM MINUTES.

FREEBORN *et al.*, *Appellants,* *against* THE SHIP *Protector.* } ON motion of Mr. Carlisle, *which was opposed by Mr. Phillips,* it is now here ordered by the court that the amended return referred to in the return of the Clerk of

the Circuit Court to the writ of *certiorari* in this cause, be, and the same is hereby allowed, to be filed, and made part of the return to said writ of *certiorari*.

16 Jany., 1871.

COPY OF STIPULATION.

FREEBORN *et al.*
against
THE SHIP *Protector.*

Dec. Term, 1870.
No. 83.

IT is hereby stipulated that this case stand postponed with the leave of the court, until the twentieth day of February next, in order to afford time to the appellee's counsel to prepare for the argument after the amended return to *certiorari* shall have been printed, as this day ordered by the Court.

CARLISLE, *for Appellant.*
16th Jany., 1871. P. PHILLIPS, *for Appellee.*

FROM MINUTES.

FREEBORN *et al.*, *Appellants,*
against
SHIP *Protector.*

IT is now here ordered by the court that this cause be, and the same is, hereby set down for argument on Monday, the 20th day of February, 1871, pursuant to stipulation of Counsel filed this day.

16 Jany., 1871.